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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Banking Division[187]

Replace Chapter 18

Iowa Finance Authority[265]

Replace Analysis

Replace Chapter 32

Insert Chapter 43

Public Safety Department[661]

Replace Analysis

Insert Reserved Chapters 560 to 599 and Chapter 600

Veterans Affairs, Iowa Department of[801]

Replace Chapter 10

CHAPTER 18
MORTGAGE BANKERS, MORTGAGE BROKERS, AND REAL ESTATE CLOSING AGENTS

187—18.1(17A,535B) Definitions. For the purposes of this chapter, the definitions in Iowa Code chapter 535B shall apply. In addition, unless the context otherwise requires:

“Criminal background check” means a state criminal background check and a national criminal history check through the Federal Bureau of Investigation.

“License application” means an electronic application submitted to the administrator for a license to operate as a mortgage banker, mortgage broker, or closing agent in accordance with the provisions of 2009 Iowa Code Supplement section 535B.4 as amended by 2010 Iowa Acts, Senate File 2348, section 4.

“Licensee” means a person who has a license to operate as a mortgage banker, mortgage broker, or closing agent in accordance with the provisions of 2009 Iowa Code Supplement section 535B.4 as amended by 2010 Iowa Acts, Senate File 2348, section 4.

“Makes at least four mortgage loans,” as used in Iowa Code section 535B.1(4) *“a,”* means the person is listed on loan documents as the lender for at least four mortgage loans.

“Mortgage application” means:

1. Any communication, regardless of form, from a licensee to a borrower requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

2. Any communication, regardless of form, from a borrower to a licensee for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

“Mortgage loan originator” means a natural person who is licensed under 2009 Iowa Acts, Senate File 355, and 187—Chapter 19.

“Nationwide mortgage licensing system and registry” or *“NMLS&R”* means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage providers, mortgage lenders, mortgage brokers, and mortgage servicers.

“Services a loan” or *“servicing a loan”* means undertaking the direct collection of payments on a loan from the borrower or the right to undertake direct collection of payments on a loan from the borrower.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.2(17A,535B) Application for license.

18.2(1) Application for a license to operate as a mortgage banker, mortgage broker, or closing agent shall be submitted to the administrator through the NMLS&R, and all requested information shall be provided on or with the application form. The administrator may consider an application or registration withdrawn if it does not contain all of the information required and the information is not submitted to the administrator within 30 days after the administrator requests the information.

18.2(2) The license application shall be accompanied by a fee of \$500 plus \$40 per additional branch location. The \$500 fee is not subject to refund. The applicant shall also pay any additional fees required by the NMLS&R including but not limited to the following: system processing fees, background check fees, and credit background check fees.

18.2(3) If any information changes after the filing of the initial application, the applicant shall provide updated information to the administrator in writing within 10 calendar days of the change. Failure to provide updated information when a change has occurred may result in denial of the application.

18.2(4) The administrator shall approve or deny a license application in accordance with the provisions of 2009 Iowa Code Supplement section 535B.5 as amended by 2010 Iowa Acts, Senate File 2348, section 5. A person shall not be eligible for licensing as a mortgage banker or mortgage broker

unless all mortgage loan originators who are employed by, under contract with, or exclusive agents of the person have successfully completed the licensing requirements of Iowa Code chapter 535D.

18.2(5) An applicant for a mortgage banker or mortgage broker license must file with the administrator a bond complying with the provisions of 2009 Iowa Code Supplement section 535B.9 as amended by 2010 Iowa Acts, Senate File 2348, section 7. The bond amount required to be filed and maintained by the applicant shall be set and adjusted as necessary annually in accordance with the following scale, based on the volume of residential mortgage loans made, originated, arranged, brokered, processed, underwritten, and serviced, as the case may be, by the applicant or licensee during the preceding calendar year:

<u>Loans</u>	<u>Bond Amount</u>
\$0 – \$100,000,000	\$100,000
Over \$100,000,000	\$150,000

18.2(6) An applicant for a closing agent license must file with the administrator a bond in the amount of \$25,000 which complies with the provisions of 2009 Iowa Code Supplement section 535B.9 as amended by 2010 Iowa Acts, Senate File 2348, section 7.

18.2(7) Licenses expire on the next December 31 after issuance. However, licenses granted on or after November 1 but before January 1 will not expire until December 31 of the following year. For example, a license granted on November 17, 2008, would not expire until December 31, 2009.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.3(17A,535B) Renewal of license.

18.3(1) To remain authorized to act as a mortgage banker, mortgage broker, or closing agent, a licensee must renew a license before the expiration date of the license. A licensee who fails to renew a license before expiration is not authorized to act as a mortgage banker, mortgage broker, or closing agent in Iowa after the expiration date.

18.3(2) Application to renew a license shall be submitted to the administrator before December 1 of the year of expiration through the NMLS&R. All requested information shall be provided to the administrator as directed by the NMLS&R. Applications for renewal of a license to transact business solely as a mortgage broker or closing agent must be accompanied by a fee of \$200. Applications for renewal of a license to transact business as a mortgage banker must be accompanied by a fee of \$400. In addition, the mortgage banker or mortgage broker licensee shall pay a branch office renewal fee of \$40 per branch. The administrator may assess late fees of up to \$10 per day for applications submitted after December 1.

18.3(3) The administrator shall grant an application to renew a license if:

- a. The administrator receives the application by December 1, accompanied by the appropriate renewal fee, or the administrator receives the application after December 1 but before January 1 and it is accompanied by the appropriate renewal fee and the appropriate late fee;
- b. The application is fully completed with all necessary information; and
- c. The application does not reveal grounds to deny a license.

18.3(4) A renewal application received by the administrator after December 31 may, at the discretion of the administrator, be rejected for processing or may be treated as a new application for a license. A licensee who fails to renew a license before the expiration date is not authorized to act as a mortgage banker, mortgage broker, or closing agent in Iowa after the expiration date.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.4(17A,535B) Individual registration requirements. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.5(17A,535B) Renewal of individual registration. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.6(17A,535B) Unattached status of individual registrant. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.7(17A,535B) Notice of significant events. A licensee shall notify the administrator immediately and in writing within five business days of the occurrence of any of the following events.

18.7(1) The licensee or any of the licensee's officers, directors, principal stockholders, or affiliates file for bankruptcy protection.

18.7(2) A prosecuting authority files criminal charges against the licensee or any of a licensee's officers, directors, principal stockholders, or affiliates.

18.7(3) Another state or jurisdiction institutes license denial, cease and desist, suspension or revocation procedures, or other formal or informal regulatory action against the licensee or any of the licensee's officers, directors, principal stockholders, or affiliates.

18.7(4) The attorney general of Iowa, the Federal Trade Commission, or the enforcer of the consumer protection laws of any other jurisdiction initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, principal stockholders, mortgage loan originators, employees, or affiliates.

18.7(5) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller/servicer.

[ARC 8238B, IAB 10/21/09, effective 1/1/10]

187—18.8(17A,535B) Changes in the licensee's business; fees.

18.8(1) No mortgage banker or mortgage broker licensee shall conduct the residential mortgage lending activities authorized in Iowa Code chapter 535B under any name other than that stated on the license.

18.8(2) A licensee shall notify the administrator through the NMLS&R of a change in the location, the addition, or the closing of any office prior to the change, addition, or closure.

18.8(3) A mortgage banker or mortgage broker licensee shall maintain on file with the administrator, through the NMLS&R, a list of all mortgage loan originators who are employed by, under contract with, or exclusive agents of the licensee. The licensee shall pay any fees assessed by the NMLS&R to add a mortgage loan originator to the licensee's list in the NMLS&R.

18.8(4) When a mortgage loan originator ceases to be employed by, under contract with, or an exclusive agent of a mortgage banker or mortgage broker licensee, the licensee shall notify the administrator, through the NMLS&R, within five business days. The notification shall include the reasons for the termination of the mortgage loan originator's employment, contract, or agency.

18.8(5) A mortgage banker or mortgage broker licensee shall notify the administrator through the NMLS&R of the addition of any mortgage loan originator, owner, officer, partner, or director within five business days of addition.

18.8(6) Failure to notify the administrator within the prescribed time as required by this rule may subject the licensee to disciplinary action.

18.8(7) NMLS&R system processing fees. In addition to the fees set forth in this chapter, the applicant or licensee shall pay any fee assessed by the NMLS&R attributed to the licensee's record in the NMLS&R system including but not limited to the initial set-up fee, an annual processing fee, and a loan sponsorship transfer fee.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.9(17A,535B) Administrative fees.

18.9(1) *Examination and investigation late fees.* A licensee shall pay the administrator the total charge for an examination or investigation within 30 days after the administrator has requested payment. If a licensee fails to pay an examination or investigation fee by the due date, the administrator may assess an additional penalty of 5 percent of the amount of the fee for each day after the due date.

18.9(2) *Late fees for failing to respond.* In the process of administering this chapter, the administrator may require a person to provide responses to formal orders, examinations, or complaint

inquiries. If a person fails to respond within 30 days of the request, the administrator may assess a penalty of \$10 per day after the initial 30 days.

18.9(3) *License determination letters.* A person who requests written confirmation from the administrator that a license is not required shall submit a fee of \$100 with the written request.

18.9(4) *Required financial statements.* A licensee who fails to file with the administrator the financial statements required under Iowa Code section 535B.10(1) within 120 days after the end of a licensee's fiscal year shall be subject to a late penalty of \$100 for each day the financial statements are delinquent, but in no event shall the aggregate of late penalties exceed \$5,000. The administrator may relieve any licensee from the payment of any penalty, in whole or in part, for good cause.

18.9(5) *Duplicate license.* The licensee shall pay a fee of \$25 for each duplicate of an original license issued.

187—18.10(17A,535B) Continuing education. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.11(17A,535B) Administrative requirements for courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.12(17A,535B) Standards for approval of courses of instruction. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.13(17A,535B) Standards for approval of live classroom courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.14(17A,535B) Standards for approval of distance education courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.15(17A,535B) Standards for approval of paper home-study courses. Rescinded IAB 10/21/09, effective 1/1/10.

187—18.16(17A,535B) Licensee records.

18.16(1) *General record requirements.* A licensee must keep records that allow the administrator to determine the licensee's compliance with relevant statutes and regulations.

a. The licensee may keep the records as a hard copy or in an electronic equivalent.

b. The licensee shall keep records for at least 36 months from the date of the final transaction with the borrower or a party in a real estate transaction.

c. The licensee shall maintain all books and records in good order and shall produce books and records for the administrator upon request. Failure to produce such books and records within 30 days of the administrator's request may be grounds for disciplinary action against the licensee.

d. The obligation to maintain records continues even after the licensee ceases business operations in Iowa and turns in or surrenders its license. The owners and directors of the licensee are responsible for ensuring this requirement is met.

e. Effective January 1, 2012, mortgage bankers and mortgage brokers shall have the capability to provide information on the characteristics of loan originations as described in subrule 18.16(11) in an electronic format prescribed by the administrator within 30 days of:

(1) The end of each calendar quarter or some other regular interval determined by the administrator;
or

(2) Notice from the administrator in the case of an examination.

18.16(2) *Required records.*

a. A mortgage broker shall keep an index, application log, and application files.

b. A mortgage banker shall keep an index, application log, application files, loan register, and loan files. If the mortgage banker also services loans, the mortgage banker must also keep account ledgers.

c. A mortgage banker who only services loans needs to keep only an index, a loan register, loan files, and account ledgers.

d. A closing agent shall keep the general business records outlined in subrule 18.16(9). The general business records are records relating to the closing agent's general business and do not include records relating to individual customer files. A closing agent shall also keep the following records relating to individual files:

- (1) A closing register containing the information outlined in subrule 18.22(5); and
- (2) A closing file containing the information outlined in subrule 18.22(6).

18.16(3) Index. All mortgage banker and mortgage broker records shall be accessible by the borrower's name (including the name of any endorser, comaker, or surety who is indebted to the lender) and account number.

18.16(4) Application log. A mortgage banker or mortgage broker licensee shall maintain an application log. The application log is a chronological list of applications received. The application log shall include the name of the applicant, date the application was completed, the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS&R identification number assigned to each, notes for action taken on applications (such as "approved," "denied," or "withdrawn"), and date of action. For approved applications, the application log shall show the date the loan closed and the name of the lender. For purposes of these rules, information from an applicant becomes an application when the licensee obtains the name and social security number of the applicant.

18.16(5) Loan register. A mortgage banker or mortgage broker licensee shall maintain a loan register. The loan register shall include the following information for every loan that is made: the date of the transaction, the name of the borrower, the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS&R identification number assigned to each, and the amount financed. The register shall be kept chronologically in the order the loans closed. The loan register may be combined with the application log.

18.16(6) Application file. A mortgage banker or mortgage broker licensee shall maintain an application file for each application received. The application file shall contain copies of the application and any required disclosures. A copy of any adverse action taken on the application, including any documentation supporting that action such as an appraisal report or credit report, shall also be placed in the application file. The application file shall also contain the name of the broker, the lender, and the mortgage loan originator, as applicable, including the unique NMLS&R identification number assigned to each.

18.16(7) Loan file. A mortgage banker or mortgage broker licensee shall maintain a loan file for each loan made. The loan file consists of the application file, the appraisal report, underwriting verifications, the closing file described in subrule 18.22(6) including other supporting documentation, and documents from the loan closing. These documents include: note, mortgage, all truth-in-lending disclosures, and all Real Estate Settlement Procedures Act disclosures. The loan file shall also contain the name of the broker, the lender, the mortgage loan originator, and the closing agent, as applicable, including the unique NMLS&R identification number assigned to each.

18.16(8) Account ledger. A mortgage banker licensee shall maintain an account ledger for each loan that is serviced, which shall include the following information:

a. The name and address of the borrower, loan number, loan date, payment terms, maturity date, principal amount of loan, amount financed, total of payments, property listed as security, and distribution of the loan proceeds.

b. The transaction history. Payments shall be posted to the account ledger effective the date payments were received. Payment entries will show the date payment was received, the total amount of the payment, and a description of how the payment was applied to the borrower's account (amount applied to principal, interest, escrow, late fees, or additional written description). Other transactions shall be fully described. Corrections to the transaction history shall be made by corrective entry and not by erasure.

c. The remaining balances due from the borrower, including principal, escrow, late fees, and other charges.

d. Any change to the interest rate and the effective date of that change.

e. Full descriptions of payments made outside the normal course of business, for example, payments made by the sale of security, insurance claim, or endorser. For any payments made by death claims on credit insurance, the date of death shall be noted in the account ledger.

f. When a loan is prepaid in full, the dates and amounts of any rebates made to the borrower including escrow rebates and the refunds of unearned insurance premiums.

18.16(9) *General business records.* A licensee must keep the following general business records for at least 36 months:

a. All checkbooks, check registers, bank statements, deposit slips, withdrawal slips, and canceled checks (or copies thereof) relating to the mortgage or real estate closing business of the licensee.

b. Complete records (including invoices and supporting documentation) for all expenses and fees paid on behalf of each mortgage applicant, including a record of the date and amount of all such payments actually made by each mortgage applicant.

c. Copies of all federal tax withholding forms, reports of income for federal taxation, and evidence of payments to all employees, independent contractors, and others compensated by a licensee in connection with the conduct of the mortgage lending or real estate closing business.

d. All correspondence and other records relating to the maintenance of any surety bond required by Iowa Code chapter 535B.

e. Copies of all contractual arrangements or understandings with third parties in any way relating to the provision of mortgage lending services or real estate closing services (including, but not limited to, any delegations of underwriting authority, any agreements for pricing of goods or services, any investor contracts, any employment agreements, and any noncompete agreements).

f. Copies of all reports of audits, examinations, inspections, reviews, investigations, or other similar functions performed by any third party, including but not limited to the administrator or any other regulatory or supervisory authority.

g. Copies of all advertisements and solicitations concerning mortgage business directed at Iowa residents, including advertisements and solicitations on the Internet or by other electronic means, in the format (e.g., recorded sound, video, print) in which the advertisements and solicitations were published or distributed.

18.16(10) *Disposal of records.* If the licensee or former licensee disposes of records at the end of the retention period, the licensee or former licensee shall dispose of the records in a reasonable manner that safeguards any identification information, as defined in Iowa Code section 715A.8(1) “a.” The owners and directors of licensees and former licensees are responsible for ensuring this requirement is met.

18.16(11) *Loan records required to be maintained electronically.*

a. Effective January 1, 2012, mortgage bankers and mortgage brokers shall maintain the following records electronically in a format prescribed by the administrator:

(1) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, the mortgage broker (if applicable), and the lender for the loan.

(2) Information sufficient to enable a computation of key items in the federal truth-in-lending disclosures, including the annual percentage rate, the finance charge, and a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures.

(3) Information included in the “good faith estimate” (GFE) disclosure required under the federal Real Estate Settlement Procedures Act, including the rate, the date of any interest rate lock, and an itemization of settlement charges and all broker compensation.

(4) Information included in the final HUD-1 Settlement Statement.

(5) Information related to the terms of each loan, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, the duration of prepayment penalty, and the maximum amount of penalty).

(6) Information typically used in underwriting, including the appraised value of the property, the sales price of the property (if a purchase loan), each borrower's income, the monthly payment amount, the housing debt-to-income ratio, the total debt-to-income ratio, and the credit score of each borrower.

(7) Information included in a Loan Application Register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.

b. Mortgage brokers shall provide information identified in paragraph 18.16(11)“a” unless such information is not prepared or known by the mortgage broker and the mortgage broker does not reasonably have access to the information in an electronic format.

c. The administrator shall permit mortgage bankers and mortgage brokers to utilize compatible third-party software to provide information required under this subrule.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.17(17A,535B) Mortgage call reports. Each mortgage banker and mortgage broker licensee shall submit to the NMLS&R reports of condition, which shall be in such form and shall contain such information as the NMLS&R shall require. For each day after the NMLS&R-established due date that the report is not received, the administrator may assess late fees of \$10 per day.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.18(17A,535B) Advertising and representations to potential borrowers.

18.18(1) Any advertisement of mortgage loans which are offered by or through a mortgage banker or mortgage broker licensee shall conform to the following requirements:

a. An advertisement shall be in compliance with Truth-in-Lending, Regulation Z, and any other applicable state and federal laws and regulations.

b. An advertisement shall be made only for such products and terms as are actually available and, if their availability is subject to any material requirements or limitations, the advertisement shall specify those requirements or limitations.

c. An advertisement shall not make any statement or fail to make any statement the result of which shall present a misleading or deceptive impression to consumers.

d. An advertisement shall clearly show the licensee's unique NMLS&R identification number.

18.18(2) A licensee receiving a verbal or written inquiry about the licensee's services shall respond accurately to any questions about the scope and nature of such services and any costs.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.19(17A,535B) Complaints and investigations.

18.19(1) The administrator may, at any time and as often as the administrator deems necessary, investigate a licensee and examine the licensee's books, accounts, records, and files.

18.19(2) The administrator may investigate complaints or alleged violations about any licensee.

18.19(3) The following shall constitute a complaint or alleged violation:

a. A written complaint received from a consumer, member of the public, employee business affiliate, or other governmental agency.

b. Notice to the administrator from any source that the licensee has been the subject of disciplinary proceedings in another jurisdiction.

c. Notice to the administrator from any source that the licensee has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, or other similar offense, in a court of competent jurisdiction in this state or in any other state, territory or district of the United States, or in any foreign jurisdiction.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.20(17A,535B) Disciplinary action.

18.20(1) The administrator has authority pursuant to Iowa Code chapters 535B and 17A to impose discipline for violations of Iowa Code chapter 535B and the rules promulgated thereunder.

18.20(2) Grounds for discipline. The administrator may impose any of the disciplinary sanctions set out in Iowa Code section 535B.7 when the administrator finds any of the following:

a. The licensee has violated a provision of Iowa Code chapter 535B or a rule adopted under Iowa Code chapter 535B or any other state or federal law applicable to the conduct of the licensee's business, including but not limited to Iowa Code chapters 535 and 535A.

b. A fact or condition exists which, had it existed at the time of the original application for the license, would have warranted the administrator to refuse to issue the original license.

c. The licensee is found upon investigation to be insolvent, in which case the license shall be revoked immediately.

d. The licensee has violated an order of the administrator.

e. The licensee fails to fully cooperate with an examination or investigation, including failure to respond to an administrator inquiry within 30 calendar days of the date of mailing a written communication directed to the licensee's last-known address on file with the administrator.

f. The licensee has engaged in any conduct that subverts or attempts to subvert an examination or investigation by the administrator.

g. The licensee continues to operate as a mortgage banker, mortgage broker, or closing agent without an active and current license.

h. and *i.* Reserved.

j. The licensee fails to notify the administrator within five days of the occurrence of one of the significant events set forth in rule 187—18.7(17A,535B).

k. Another state or jurisdiction has denied, suspended, revoked, or refused to renew the licensee's license, registration, or authorization to act as a mortgage banker, mortgage broker, or closing agent under the other state's or jurisdiction's law.

l. The licensee fails to create and maintain complete and accurate records as required by state or federal law, regulation, or rule.

18.20(3) A licensee may surrender a license by delivering to the administrator a written notice of surrender.

18.20(4) The administrator may issue a cease and desist order ordering a person to cease and desist from violating any provision of Iowa Code chapter 535B or rules adopted thereunder. The process for issuing a cease and desist order is described in Iowa Code section 535B.13.

[ARC 8238B, IAB 10/21/09, effective 1/1/10; ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.21(17A,535B) Trust fund accounting and internal controls.

18.21(1) A closing agent shall establish and maintain a separate subsidiary ledger for each real estate transaction for which the closing agent performs real estate closing services.

18.21(2) A closing agent shall prepare a trial balance for each trust account and each subsidiary ledger at least once each calendar month.

18.21(3) A closing agent shall perform a three-way reconciliation of bank balance, book balance, and trust account trial balance for each bank trust account at least once each calendar month. A member of the closing agent's management team shall review and approve the reconciliation at least once each calendar month.

18.21(4) A closing agent shall design accounting processes with the appropriate level of internal controls and management oversight. The process shall include an appropriate segregation of duties. It is recommended that trust account reconciliations be prepared by a person other than a person who records receipts or makes deposits to the trust account. A closing agent may use an outside accountant to perform reconciliations.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.22(17A,535B) Closing standards.

18.22(1) A closing agent shall read and comply with all closing instructions from the parties to the transaction.

18.22(2) A closing agent shall disburse or deliver funds only in accordance with closing instructions from the lender, the attorney's title opinion or title commitment, and the real estate purchase agreement, when applicable. All disbursements shall agree to the final signed settlement statement.

18.22(3) A closing agent shall obtain written payoff statements for any loan being paid off as part of the real estate transaction and shall make all loan payoffs as soon after the closing as is practical, but in no event more than two business days after the closing, or within one business day after the rescission period ends in the case of a refinance transaction. For the purposes of this rule, placing the loan payoffs with a delivery service for overnight delivery shall meet the requirements of this subrule.

18.22(4) A closing agent shall be responsible for ensuring that all documents for the real estate transaction that require recording are recorded with the appropriate county recorder's office in a timely manner, but in no event more than five business days after the date of the transaction.

18.22(5) A closing agent shall maintain a closing register and a closing index. A closing register is a chronological list of real estate closings. The closing register shall include for each closing the date of the transaction, the name of the buyer or borrower, the name of the seller, the name of the lender and the mortgage loan originator, and the property address, as applicable. A closing index shall be maintained so that all records are accessible by the names of the parties to the transaction (including the name of the buyer or borrower, the name of the seller, and the name of the mortgage loan originator) and file number. A searchable database containing the information required by this subrule satisfies the requirements of this subrule.

18.22(6) A closing agent shall maintain a closing file for each real estate transaction for which the closing agent performed real estate closing services. The closing file shall include, at a minimum, the following records:

a. An accounting ledger or disbursement sheet that details all receipts and disbursements with date, transaction type, check number, payee, amount, and the file's ending balance. All ledger or disbursement sheets shall balance zero after the transaction is completed. If any balance remains, the date, the reason for the balance, and to whom the balance belongs shall be clearly documented in the file.

b. A signed settlement statement that totals properly and is supported by written instructions for all amounts (such as closing instructions, invoices, or written payoffs). If the settlement requires changes, a copy of the new settlement statement with changes clearly documented shall be maintained in the file.

c. A copy of the closing instructions from the lender and other parties to the transaction.

d. A copy of the signed real estate contract, if applicable.

e. Detailed records of the individuals present at each closing, including copies of photo identification, and specifying where and when each closing is held.

f. Properly executed affidavits, where required.

g. Evidence that the real estate transaction documents were filed with the county recorder.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.23(17A,535B) Employees of closing agents.

18.23(1) A closing agent shall exercise diligence in hiring practices, including policies regarding background investigations. A closing agent shall conduct a background investigation and credit check for each employee responsible for handling funds.

18.23(2) A closing agent shall provide appropriate training to employees on real estate closing matters, including trust account administration, real estate closing procedures, and fraud prevention.

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.24(17A,535B) Reporting obligation. If a closing agent detects defalcation regarding the closing agent's trust account funds, the closing agent must file the following notice with the division of banking within three days of discovering the defalcation. "We have detected circumstances regarding our trust account funds that may warrant an investigation by the banking division. The amount of funds involved is believed to be \$ _____."

[ARC 9593B, IAB 6/29/11, effective 7/1/11; ARC 9688B, IAB 8/24/11, effective 9/28/11]

187—18.25(17A,535B) Real estate brokers. For the purposes of applying the exemption in Iowa Code section 535B.2(6), a real estate broker performing real estate closing services shall be deemed to be engaged in practice as a real estate broker only when performing real estate closing services on a transaction in which the broker's brokerage represents one of the parties to the transaction and the

closing is being administered through an account regulated by the real estate commission pursuant to Iowa Code chapter 543B.

[**ARC 9593B**, IAB 6/29/11, effective 7/1/11; **ARC 9688B**, IAB 8/24/11, effective 9/28/11]

These rules are intended to implement Iowa Code chapter 535B and 2010 Iowa Acts, Senate File 2348.

[Filed 5/3/06, Notice 3/29/06—published 5/24/06, effective 7/1/06]

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[Filed ARC 8238B (Notice ARC 8066B, IAB 8/26/09), IAB 10/21/09, effective 1/1/10]

[Filed Emergency ARC 9593B, IAB 6/29/11, effective 7/1/11]

[Filed ARC 9688B (Notice ARC 9592B, IAB 6/29/11), IAB 8/24/11, effective 9/28/11]

IOWA FINANCE AUTHORITY[265]

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265—32.1(16) Purpose. The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs program. The board will encourage and support public construction projects relating to disaster relief and mitigation and to local infrastructure.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.2(16) Definitions. When used in this chapter, the following definitions apply unless the context otherwise requires:

“Authority” or *“IFA”* means the Iowa finance authority.

“Board” means the Iowa jobs board as established in 2009 Iowa Acts, Senate File 376, section 5.

“Disaster” means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR; additionally, the Iowa jobs board may, by resolution, designate an event that occurs subsequent to June 15, 2009, as a disaster.

“Financial feasibility” means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

“Future flood prevention” means measures intended to mitigate or lessen the damages caused by future flooding.

“Indirect jobs” means jobs created by suppliers of materials used in the construction or operation of the project.

“Induced jobs” means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

“Iowa jobs program review committee” or *“review committee”* means the committee established by 2009 Iowa Acts, Senate File 376, section 9(2), and constituted as described in this chapter.

“Local infrastructure” means:

1. Projects relating to disaster rebuilding;
2. Reconstruction and replacement of local public buildings;
3. Flood control and flood protection; and
4. Future flood prevention.

“Local infrastructure” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“Local support” means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

“Program” means the Iowa jobs program established in 2009 Iowa Acts, Senate File 376, sections 5 to 12.

“Public construction project” means a project for the construction of local infrastructure by a county, city, or public organization.

“Public organization” means a nonprofit organization that sponsors or supports the public needs of one or more local Iowa communities and that was in operation prior to January 1, 2009; provided that (1) such organization is described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and is exempt from federal tax under Section 501(a) of the Internal Revenue Code, and (2) such organization is determined by the board not to be affiliated with or controlled by a for-profit organization.

“Recipient” means an entity under contract with the Iowa jobs board to receive Iowa jobs funds and undertake a funded project.

“Sustainability” means the use, development, and protection of resources at a rate and in a manner that enables people to meet their current needs while allowing future generations to meet their own needs; “sustainability” requires simultaneously meeting environmental, economic and community needs.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.3(16) Allocation of funds. All Iowa jobs funds shall be awarded and used as specified in 2009 Iowa Acts, Senate File 376, and these rules. Any portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for future flood prevention, reconstruction and replacement of local public buildings, disaster rebuilding, flood control and flood protection projects (pursuant to the local infrastructure competitive grant program) shall not exceed \$165 million for the fiscal year beginning July 1, 2009.
[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.4(16) Local infrastructure competitive grant program. The board shall assist in the development and completion of public construction projects relating to disaster relief and mitigation and to local infrastructure by overseeing and providing approval of the administration of a local infrastructure competitive grant program, as set forth herein.

32.4(1) Iowa jobs program review committee. The Iowa jobs program review committee shall comprise five members, consisting of the following members of the Iowa jobs board: three of the general public members, as appointed to the review committee by the Iowa jobs chair, the executive director of the Iowa finance authority (or designee), and the director of Iowa workforce development (or designee). The review committee shall comply with Iowa Code chapter 21 and with Iowa Code sections 69.16 and 69.16A. From its public members, the review committee shall elect a chair and a vice chair. Two-thirds of the review committee members eligible to vote shall constitute a quorum authorized to act in the name of the review committee.

32.4(2) Eligible applicants. Eligible applicants for Iowa jobs local infrastructure competitive grant program funds shall be Iowa cities, Iowa counties, and public organizations.

32.4(3) Eligible projects and forms of assistance. For a project to be eligible to receive a competitive grant from the board, the project must be a public construction project in the state of Iowa with a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. An applicant for a competitive grant shall not receive more than \$50 million in financial assistance from the Iowa jobs restricted capitals fund.

a. Any award of a competitive grant to a project shall be limited as follows:

(1) Up to 75 percent of the total cost of a project for replacing or rebuilding existing disaster-related damaged property; or

(2) Up to 50 percent of the total cost for all other projects.

b. The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to an award that are within the intent of the terms of a board-approved award.

32.4(4) Ineligible projects. The board shall not approve an application for a competitive grant for either of the following purposes:

a. To refinance a loan existing prior to the date of the initial financial assistance application.

b. For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

32.4(5) Threshold application requirements. To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

a. Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 20 days prior to submitting its application;

b. The application must be submitted by an eligible applicant, must be complete and on forms or in the format specified for such purpose by the authority (the authority may, in its discretion, require the use of a Web-based application format), and must be received by the authority by the applicable deadline;

c. The proposed project must be for the development and completion of one or more public construction projects relating to disaster relief and mitigation or to local infrastructure;

d. There must be demonstrated local support for the proposed project;

e. The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact; and

f. The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

32.4(6) *Application procedure.*

a. Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 3, 2009. Subsequent rounds shall be at the discretion of the board as funding is available. Applications for each such round shall be due not later than January 1, April 1, July 1, and October 1 of each year, respectively.

b. Subject to availability of funds, applications will be reviewed by IFA staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

c. The review committee members will score the applications according to the criteria set forth in subrule 32.4(7), and IFA staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points. The review committee shall meet to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

d. Once an application has been referred to the Iowa jobs board, the applicant may, upon request of the applicant and at the discretion of the chair of the board, make a presentation to the board. The board may impose reasonable limitations on the length and format of such presentations.

e. If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

f. Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

g. If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

h. Application resources for the Iowa jobs program are available at the Iowa jobs Web site: www.ijobsiowa.gov.

i. IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

j. A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

32.4(7) *Application review criteria.* The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

a. *The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

b. Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points). The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) The availability of other federal, state, local, and private sources of funds for the project.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

c. Sustainability and energy efficiency. The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

- Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project is designed to meet energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

d. Benefits for disaster recovery (0-40 points). The likely benefits for disaster recovery of the proposed project shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether the proposed project replaces or repairs a structure or facility damaged by the disaster and incorporates measures for reducing or eliminating future disaster losses;

(2) Whether the proposed project would help achieve the community's or region's overall post-disaster recovery vision;

(3) Whether the proposed project benefits the economic recovery of individuals, businesses, or nonprofit organizations.

e. The project's readiness to proceed (0-40 points). The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

f. General scoring criteria.

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8103B, IAB 9/9/09, effective 8/19/09; ARC 8327B, IAB 12/2/09, effective 11/4/09; ARC 8456B, IAB 1/13/10, effective 2/17/10; ARC 8545B, IAB 2/24/10, effective 3/31/10]

265—32.5(16) Noncompetitive grants.

32.5(1) Pursuant to 2010 Iowa Acts, Senate File 2389, section 10(4)“a,” the board shall award \$30,900,000 as follows for disaster relief and mitigation renovation and construction projects, notwithstanding any limitation on the state’s percentage participation in funding as contained in Iowa Code section 29C.6(17):

a. To a county with a population between 189,000 and 196,000 in the last preceding certified federal census for the renovation and expansion of an administrative office building: \$4,400,000.

b. To a city with a population between 120,500 and 120,800 in the last preceding certified federal census, for the following projects:

(1) For renovation of an existing public building to make the building useful for city department offices: \$4,400,000.

(2) For flood mitigation or renovation in and around an existing courthouse: \$2,000,000.

c. To a city with a population between 198,000 and 199,000 in the last preceding certified federal census to be allocated as follows:

(1) For site acquisition, design, engineering, and construction of a fire training and logistics center: \$3,000,000.

(2) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate and convey sewer flow within the riverpoint service area: \$1,250,000.

(3) For land acquisition, design, and construction of sewers, structures, and pumping facilities necessary to separate or convey sewer flow within the Court Avenue service area: \$3,050,000.

(4) For bank stabilization, stream bed stabilization, and erosion control on highly erodible ground that is impacting utilities, road infrastructure, and water quality: \$700,000.

(5) To improve utilization of two of the wastewater reclamation authority’s existing equalization basins for the control of peak flows during wet weather events in the authority’s sewer system: \$500,000.

d. For a publicly owned acute care teaching hospital located in a county with a population of over 350,000, for the construction and renovation of patient access and care facilities, equipment replacement and upgrades, and other infrastructure improvements: \$1,000,000.

e. For a city with a population between 98,300 and 98,400 in the last preceding certified federal census, for flood protection, replacement, and construction improvements to a recreational sports facility: \$1,050,000.

f. For a city with a population between 68,700 and 68,800 in the last preceding certified federal census, for a public works building that will allow the city to provide for disaster-related services: \$5,000,000.

g. For a city with a population between 62,100 and 62,250 in the last preceding certified federal census, for the demolition, relocation, and reconstruction of a public wastewater treatment plant and the development of a public green space: \$2,000,000.

h. For a city with a population between 2,545 and 2,555 in the last preceding certified federal census, for a streetscape project that reconstructs existing horizontal infrastructure and lighting systems utilizing sustainable development practices: \$1,175,000.

i. For a city with a population between 2,200 and 2,220 in the last preceding certified federal census, for construction of a public city building: \$475,000.

j. For a city with a population between 2,558 and 2,565 in the last preceding certified federal census, for the installation of backflow prevention devices for the city’s storm sewer system: \$600,000.

k. For a city with a population between 6,875 and 6,890 in the last preceding certified federal census, for the construction of grade control structures and associated grading to mitigate future water damage to residential structures: \$300,000.

32.5(2) Noncompetitive grant awards are contingent upon submission of a plan for each project by the applicable county or city governing board to the Iowa jobs board no later than September 1, 2010, on a form to be prescribed by the authority, detailing information requested thereon, such as a description of the project, the plan to rebuild, and the amount or percentage of federal, state, local, or private matching moneys which will be or have been provided for the project, and similar information.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8905B, IAB 6/30/10, effective 6/10/10]

265—32.6(16) General grant conditions. As a condition of receipt of Iowa jobs funds, recipients shall agree, at a minimum, to all of the following:

32.6(1) Documentation of jobs created or retained. Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

32.6(2) Recipient obligations. In the event a recipient fails to comply with the requirements of this program or the recipient's grant agreement, the board may cancel the recipient's grant and require the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers, employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

32.6(3) Grant acknowledgment. Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

32.6(4) Use of Iowa jobs Web site. All positions that need to be filled for a project shall be posted on Iowa workforce development's Iowa jobs Web site: www.iowajobs.org/.

[ARC 7941B, IAB 7/15/09, effective 6/15/09]

265—32.7(16) Calculation of jobs created. For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Permanent positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 9691B, IAB 8/24/11, effective 9/28/11]

265—32.8(16) Grant awards. The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered. In the event that a competitive grant recipient, prior to execution of an Iowa jobs grant agreement, is awarded a federal grant for its project, in whole or in part, which federal grant, or the possibility thereof, was not disclosed as part of the recipient's application, the board may withdraw all or part of the Iowa jobs program grant.

[ARC 7941B, IAB 7/15/09, effective 6/15/09; ARC 8455B, IAB 1/13/10, effective 12/14/09; ARC 8626B, IAB 3/24/10, effective 4/28/10]

265—32.9(16) Administration of awards.

32.9(1) A grant agreement shall be executed between successful applicants (under both the competitive and noncompetitive grant programs) and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

32.9(2) Grant agreement.

a. Following the board's determination that a competitive grant application should be approved, authority staff shall propose a draft grant agreement to the recipient. Within 30 days of either transmission of the proposed grant agreement to the recipient or transmission of notice of how the proposed grant agreement may be accessed by the recipient via the Internet, the recipient shall notify the authority as to whether the recipient will execute the proposed agreement or whether the recipient would prefer to negotiate a different agreement. If the recipient elects to execute the proposed agreement, or if the

recipient fails to make a timely election, the authority shall prepare and transmit to the recipient on behalf of the board a final contract for execution.

b. If the recipient elects to negotiate a different agreement, the recipient shall, at the time it makes such election, notify the authority of the requested changes to the proposed grant agreement. The authority shall consider the requested changes and may make such revisions to the proposed agreement as the authority determines to be prudent and in the best interests of the Iowa jobs program and the state of Iowa under the circumstances.

c. Once the authority and the recipient have reached an agreement, the authority shall prepare and transmit to the recipient on behalf of the board a final contract, subject to approval by the board.

d. If the authority and the recipient are unable to reach an agreement, the authority shall, with the board's approval, draft and transmit to the recipient on behalf of the board a final contract consisting of the Iowa jobs board's best and final offer.

32.9(3) The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

32.9(4) Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

32.9(5) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

32.9(6) Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

[**ARC 7941B**, IAB 7/15/09, effective 6/15/09; **ARC 8455B**, IAB 1/13/10, effective 12/14/09; **ARC 8626B**, IAB 3/24/10, effective 4/28/10]

These rules are intended to implement Iowa Code section 16.5(1) "r" and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

[Filed Emergency ARC 7941B, IAB 7/15/09, effective 6/15/09]

[Filed Emergency ARC 8103B, IAB 9/9/09, effective 8/19/09]

[Filed Emergency ARC 8327B, IAB 12/2/09, effective 11/4/09]

[Filed Emergency ARC 8455B, IAB 1/13/10, effective 12/14/09]

[Filed ARC 8456B (Notice ARC 8108B, IAB 9/9/09), IAB 1/13/10, effective 2/17/10]

[Filed ARC 8545B (Notice ARC 8328B, IAB 12/2/09), IAB 2/24/10, effective 3/31/10]

[Filed ARC 8626B (Notice ARC 8454B, IAB 1/13/10), IAB 3/24/10, effective 4/28/10]

[Filed Emergency ARC 8905B, IAB 6/30/10, effective 6/10/10]

[Filed ARC 9691B (Notice ARC 9457B, IAB 4/6/11), IAB 8/24/11, effective 9/28/11]

CHAPTER 43
COMMUNITY HOUSING AND SERVICES FOR PERSONS WITH DISABILITIES
REVOLVING LOAN PROGRAM

265—43.1(16) Purpose. Through its community housing and services for persons with disabilities revolving loan program, the authority seeks to further the availability of affordable housing and supportive services for Medicaid waiver-eligible individuals with behaviors that provide significant barriers to accessing traditional rental and supportive service opportunities. Loans from the community housing and services for persons with disabilities revolving loan program fund are to be used to provide financing to construct permanent supportive housing or develop infrastructure in which to provide supportive services, including through new construction, acquisition and rehabilitation of existing housing or infrastructure, or conversion or adaptive reuse. This chapter is intended to implement Iowa Code section 16.5(1) and 2011 Iowa Acts, House File 649, section 50.

Pursuant to 2011 Iowa Acts, House File 649, section 50, housing provided through a project under this chapter is exempt from the requirements of Iowa Code chapter 135O, Boarding Homes.
[ARC 9690B, IAB 8/24/11, effective 8/18/11]

265—43.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“Authority” means the Iowa finance authority.

“Department” means the Iowa department of human services.

“HOME” means the HOME Investment Partnership Program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990.

“Infrastructure” means the building and permanent improvements necessary for the support of Medicaid waiver-eligible individuals.

“Medicaid waiver-eligible” means eligible to receive 19 United States Code Section 1915(c) home- and community-based services waivers under Iowa Administrative Code 441—Chapter 83.

“Permanent supportive housing” means a community-based dwelling that has supportive services for persons with disabilities. This type of supportive housing enables special needs populations to live as independently as possible in a permanent setting.

“PMIC” means psychiatric medical institutions for children.

“Program” means the community housing and services for persons with disabilities revolving loan program.

[ARC 9690B, IAB 8/24/11, effective 8/18/11]

265—43.3(16) Award of loan funds. It is the authority’s intent to award loans under the program to those applicants that meet all of the requirements of this chapter and the published underwriting standards of the loan program. When an applicant for loan funds also qualifies for HOME program funds, the project must satisfy all application requirements of the HOME program adopted by the authority pursuant to rule 265—39.6(16). The authority intends to award the available funds under this program each year if applicants meet all applicable requirements.

[ARC 9690B, IAB 8/24/11, effective 8/18/11]

265—43.4(16) Application process. The authority anticipates that it will, at least annually, publicize the approximate amount of funds available under this program for the applicable fiscal year on the authority’s Web site at www.iowafinanceauthority.gov. Any unallocated or recovered funds, or payments of interest and principal, or any combination thereof, may be awarded or may be carried over to the next year’s cycle of loans at the discretion of the authority. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis, beginning on or after September 1, 2011. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to develop and expand community housing and services for Medicaid waiver-eligible individuals.

Applicants may apply for joint funding of a project using both HOME program funds and funds loaned pursuant to this chapter.

[ARC 9690B, IAB 8/24/11, effective 8/18/11]

265—43.5(16) Program guidelines. For-profit and nonprofit sponsors are eligible to apply for assistance under this program based on the following program guidelines; however, prior to submission of the loan application, a service provider must receive approval of a service plan to benefit the Medicaid waiver-eligible individuals who reside in the project. The service provider may apply for the loan fund; however, the service provider does not have to be the applicant for the loan fund. If the service provider is not the loan applicant, a memorandum of understanding must exist between the loan applicant and the service provider which shows an obligation on behalf of the service provider to deliver services to the Medicaid waiver-eligible individuals residing in the project and which shows that the loan applicant is obligated to offer housing to the Medicaid waiver-eligible individuals who need the services provided by the service provider.

43.5(1) Projects eligible for assistance must meet the following criteria:

a. Written approval must be obtained from the department for the proposed project prior to application for loan funds.

b. In order to be approved by the department, the project must demonstrate all of the following components:

(1) The project serves one of the following Medicaid waiver-eligible populations:

1. Individuals who are currently underserved in community settings, including individuals who are physically aggressive or have behaviors that are difficult to manage or individuals who meet the PMIC level of care; or

2. Individuals who are currently placed out of state by the department; or

3. Individuals who are currently receiving care in an Iowa-licensed health care facility.

(2) A plan to provide each Medicaid waiver-eligible individual with crisis stabilization services to ensure that the individual's behavioral issues are appropriately addressed by the provider.

(3) Policies and procedures that prohibit discharge of the Medicaid waiver-eligible individual from the waiver services provided by the project provider unless an alternative placement that is acceptable to the individual or the individual's guardian is identified.

c. In order to be approved by the department for application for funding for development of infrastructure in which to provide supportive services under this chapter, a project shall include all of the following components:

(1) Provision of services to Medicaid waiver-eligible individuals who meet the PMIC level of care.

(2) Policies and procedures that prohibit discharge of the Medicaid waiver-eligible individual from the waiver services provided by the project provider unless an alternative placement that is acceptable to the individual or the individual's guardian is identified.

43.5(2) The following types of activities are eligible for assistance:

a. Acquisition and rehabilitation.

b. New construction.

c. Such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for this program.

43.5(3) Assistance will be provided upon the following terms and conditions:

a. Generally, the minimum loan amount is \$50,000, and the maximum loan amount is \$500,000. The maximum loan term and amortization period are each 30 years.

b. The debt service ratio must be at least 1.25:1 for the authority's first mortgage, as calculated by the authority. In addition, the loan-to-value ratio of the project, as calculated by the authority, will be considered. Notwithstanding the above, the authority may, in its sole discretion, accept a lower debt service ratio based on the final underwriting of the project.

c. Interest rates will be set by the authority, in its sole discretion.

d. Loans shall be secured by a first mortgage, to the extent possible. Construction financing may be awarded to projects.

e. Recipients of assistance must agree to observe several covenants and restrictions all in accordance with such loan and mortgage documents as may be required by the authority under this program.

f. The recipient must provide adequate evidence that its title in the real estate on which the project is to be located is a marketable title pursuant to Iowa Land Title Examination Standards, or other applicable law. Adequate evidence of marketable title is demonstrated by either (1) a title opinion of an attorney authorized to practice law in Iowa showing that the loan recipient has marketable title, or (2) a title guaranty certificate issued by the title guaranty division of the Iowa finance authority showing the recipient as the guaranteed.

g. Recipients must execute such documents and instruments and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

43.5(4) Loan fees.

a. Loan fees are as follows:

- (1) Application fee – 0.3 percent of loan amount.
- (2) Commitment fee (construction period) – 1.0 percent of loan amount.
- (3) Commitment fee (permanent loan) – 2.0 percent of loan amount.
- (4) Inspection fee (construction loan) – 0.5 percent of loan amount.

b. The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

[ARC 9690B, IAB 8/24/11, effective 8/18/11]

265—43.6(16) Authority analysis of applications. Authority staff will analyze and underwrite each potential project and will make recommendations for funding assistance to the authority board of directors. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that, because of the complex nature of each transaction and the particular set of circumstances attributable to each particular application/transaction, the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program.

[ARC 9690B, IAB 8/24/11, effective 8/18/11]

265—43.7(16) Discretion of authority board. The authority board of directors has the sole and final discretion to award or not to award assistance and to approve final loan terms.

[ARC 9690B, IAB 8/24/11, effective 8/18/11]

265—43.8(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and, accordingly, not advance any funds for such project.

[ARC 9690B, IAB 8/24/11, effective 8/18/11]

These rules are intended to implement Iowa Code section 16.5(1) and 2011 Iowa Acts, House File 649, section 50.

[Filed Emergency ARC 9690B, IAB 8/24/11, effective 8/18/11]

PUBLIC SAFETY DEPARTMENT[661]

Rules transferred from agency number 680 to 661 to conform with the reorganization numbering scheme in general

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CHAPTER 600
STATEWIDE INTEROPERABLE COMMUNICATIONS SYSTEM BOARD

661—600.1(80) Establishment of board. The Iowa statewide interoperable communications system board is established in Iowa Code section 80.28, under the joint purview of the department of public safety and the department of transportation. The board is charged to develop, implement, and oversee policy, operations, and fiscal components of communications interoperability efforts at the state and local levels, and to coordinate with similar efforts at the federal level, with the ultimate objective of developing and overseeing the operation of a statewide integrated public safety interoperable communications system.

[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.2(80) Definitions. The following definitions apply to the rules in this chapter:

“*Board*” means the statewide interoperable communications system board established in Iowa Code section 80.28.

“*Interoperability*” means the ability of public safety and public services personnel to communicate and to share data on an immediate basis, on demand, when needed, and when authorized.

“*Legal counsel to the board*” means the assistant attorney general assigned to provide legal advice and representation to the board.

“*Quorum*” means two-thirds or more of the current voting members of the board, as provided in Iowa Code section 17A.2, subsection 1. “Current voting members” does not include any board positions which are vacant.

[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.3(80) Statewide interoperability coordinator. The board may select and appoint a person who is not a member of the board as the statewide interoperability coordinator (or “SWIC”) to coordinate work performed on behalf of the board and to complete tasks related to the mission of the board as assigned by the board or by the chairperson of the board with board approval.

[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.4(80) Board procedures. The board shall operate under the following procedures:

600.4(1) Membership. The board shall include 15 voting members and 4 ex officio, nonvoting members who are members of the Iowa general assembly, as provided in Iowa Code section 80.28.

600.4(2) Meetings.

a. The board shall meet at least once a quarter at a time and place determined by the board. Additional meetings may be called by:

- (1) The chairperson,
- (2) The vice chairperson, or
- (3) By the statewide interoperability coordinator, at the request of five or more voting members of the board.

b. If a quorum is not present at a scheduled meeting of the board, the members of the board who are present may convene, may take testimony and public comment, and may engage in discussion of board business but shall not take any action other than to adjourn.

c. Notice of all meetings of the board shall be given in accordance with the provisions of Iowa Code section 21.4. In addition, notice of any scheduled board meeting and a tentative agenda of that meeting shall be posted on the Web site of the board prior to the scheduled time of the meeting.

d. All meetings of the board are public meetings and shall be conducted in accordance with Iowa Code section 21.3.

(1) A portion of any board meeting may be closed to the public for any of the reasons enumerated in Iowa Code section 21.5 and only subsequent to the procedures specified in Iowa Code section 21.5 to be followed by a public body in order to close a meeting to the public. If a board meeting has been closed to the public, the board shall not adjourn while in closed session, but may do so only after the meeting has been reopened to the public.

(2) The chairperson or vice chairperson may extend invitations to subject matter experts or other parties to address items on the agenda of the board at meetings of the board.

(3) Members of the public shall be afforded an opportunity to address the board at each regular meeting during a period labeled “public comment period” on the agenda, subject to reasonable time limits established by the person presiding at the meeting.

(4) Remote telephonic access to a meeting of the board may be provided at the request of a board member or a member of the public.

e. Meetings of the board shall be conducted in accordance with Roberts Rules of Order, 10th edition.

600.4(3) Officers. Officers of the board shall be a chairperson and a vice chairperson.

a. Election of the chairperson and the vice chairperson shall take place at a regular meeting of the board.

b. The chairperson and the vice chairperson shall each be elected for a two-year term, commencing at the conclusion of the meeting at which the election takes place.

c. The chairperson and the vice chairperson shall each be a voting member of the board.

d. If the chairperson or the vice chairperson ceases to be a voting member of the board, or if the chairperson or the vice chairperson resigns from the position, the position shall become vacant. If the position of the chairperson becomes vacant, the vice chairperson shall become chairperson and shall serve the remainder of the two-year term to which the chairperson had been elected, and the position of vice chairperson shall become vacant. If the position of vice chairperson has become vacant, an election to fill the remainder of the two-year term shall be conducted at the next regular meeting of the board following the occurrence of the vacancy.

e. Election to the position of chairperson or vice chairperson shall require a majority of the voting members of the board who are present and voting at a meeting at which a quorum of the board is in attendance.

f. If the board fails to elect a chairperson or a vice chairperson at the board meeting when a term of office ends, the incumbent chairperson or vice chairperson shall continue to serve until a successor is elected.

[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.5(80) Administrative procedures. 661 Iowa Administrative Code Chapter 10 is hereby adopted by reference, with the following amendment:

600.5(1) Wherever the term “department,” “department of public safety,” “commissioner,” or “commissioner of public safety” appears, substitute the term “board.”

600.5(2) Reserved.

[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.6(80) Committees.

600.6(1) Standing committees. A standing committee may be created or disbanded by majority vote of the voting members of the board present at any board meeting.

a. The chairperson of each standing committee shall be a voting member of the board.

b. Persons who are not voting members of the board may serve on a standing committee.

c. The chairperson of the board, with approval of the board, shall appoint members of the standing committee.

600.6(2) Ad hoc committees. The chairperson may establish ad hoc committees for specific purposes and terms and may appoint persons to those committees in an advisory capacity based upon their expertise in the subject matter.

[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.7(80) Board finances. Operational expenses of the board and of the statewide interoperability coordinator shall be paid from funds available to the department of public safety or the department

of transportation, pursuant to an agreement between those agencies, except that expenses related to participation on the board by employees of state agencies shall be borne by their respective agencies.
[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.8(80) Contracts. The board may enter into contracts with other entities to carry out tasks in pursuit of the board's purpose. Any such contract shall be entered into subject to approval of the legal counsel to the board and shall comply with the rules of the department of administrative services and any other applicable state laws regarding purchases by state agencies.
[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.9(80) Competitive grants. If funds are available to the board to award grants on a competitive basis for projects to further the purposes of the board, the chairperson shall appoint an advisory committee to review grant applications. The chairperson of the advisory committee shall be a voting member of the board, although other members may be members of the board or other persons with expertise helpful in evaluating grant applications. The statewide interoperability coordinator shall, prior to the solicitation of applications for the grant funds and with the approval of the board, develop a grant application form and an evaluation methodology which shall be understandable and made available to any prospective applicant. The availability of grant funds shall be made known as widely as practicable prior to the deadline for accepting applications.
[ARC 9678B, IAB 8/24/11, effective 10/1/11]

661—600.10(80) Additional information. Additional descriptive and explanatory information about the board and its procedures and about interoperability issues may be found on the Web site of the board.

NOTE: The board Web site may be found at <http://isicsb.iowa.gov/index.html>.
[ARC 9678B, IAB 8/24/11, effective 10/1/11]

These rules are intended to implement Iowa Code section 80.29.

[Filed ARC 9678B (Notice ARC 9516B, IAB 5/18/11), IAB 8/24/11, effective 10/1/11]

CHAPTER 10
IOWA VETERANS HOME

[Prior to 2/29/84, Social Services[770] Ch 134]

[Prior to 2/11/87, Human Services[498] Ch 10]

[Prior to 1/20/93, Human Services[441] Ch 10]

PREAMBLE

The Iowa Veterans Home is a long-term health care facility located in Marshalltown, Iowa, operated by the Commission of Veterans Affairs.

801—10.1(35D) Definitions relevant to Iowa Veterans Home. The following definitions are unique to rules pertaining to the Iowa Veterans Home.

“Acute alcoholic” means any disturbance of emotional equilibrium caused by the consumption of alcohol resulting in behavior not currently controllable.

“Acutely mentally ill” means any disturbance of emotional equilibrium manifested in maladaptive behavior and impaired functioning caused by genetic, physical, chemical, biological, psychological, social or cultural factors which requires hospitalization.

“Addicted to drugs” means a state of dependency as medically determined resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 124.

“Adjutant” means the chief executive assistant of the commandant who functions as the chief operations officer.

“Admissions committee” means the committee appointed by the commandant to review applications to determine eligibility for admission and appropriate level and category of care.

“Applicant” means a person who is applying for admission into the Iowa Veterans Home.

“Assets” means items of value held by, or on behalf of, an applicant or member. Assets include, but are not limited to, cash, savings and checking accounts; stocks; bonds; contracts for sale of property; homestead or nonhomestead property. Nonrecurring windfall payments such as, but not limited to, inheritances; death benefits; insurance or tort claim settlements; and cash payments received from the conversion of a nonliquid asset to cash shall be considered assets upon receipt.

“At once” or *“timely”* means within ten calendar days.

“Collaborative care plan” means the plan of care developed for a member by the interdisciplinary resident care committee.

“Commandant” means the chief executive officer of the Iowa Veterans Home.

“Commission” means the Iowa commission of veterans affairs.

“Continuously disruptive” means any behavior, on a recurring basis, which has been documented by Iowa Veterans Home staff, that causes harm to a member or staff or conflicts with the member responsibilities set forth in subrule 10.12(1).

“Countable asset” means an asset to be considered in calculation of member support obligation.

“Dangerous to self or others” means any activity by a member which would result in injury to the member or others.

“Dependent” means a person for whose financial support an applicant or member is legally responsible or obligated.

“Director of admissions” means the public service executive responsible for the admissions process, benefits programming, and member financial affairs.

“Director of resident and family services” means the administrator responsible for social work services and chaplain services for members.

“Diversion” means income that is transferred to a spouse before the member support is determined.

“DVA” means the U.S. Department of Veterans Affairs.

“Free time” means 12 days of leave time each calendar year for which the member is not charged for care during absence.

“Full support” means the maximum daily rate of support times the billable days of care received in any month less any offsets.

“Gold Star parent” means a parent whose child died while serving in the armed forces of the United States.

“Honorable discharge” means separation or retirement from active military service. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility). Honorable discharge includes general discharges under honorable conditions.

“Income” means money gained by labor or service, or money paid periodically to an applicant or member. Income includes, but is not limited to, disability, retirement pensions or benefits; interest, dividends, payments from long-term care insurance, or other income received from investments; income from property rentals; certain moneys related to real estate contracts; earnings from regular employment or self-employment enterprises.

“Interdisciplinary resident care committee” or *“IRCC”* means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist and other staff, as appropriate, who are involved in reviewing a member’s assessment data and developing a collaborative care plan for the individual member.

“IVH” means the Iowa Veterans Home.

“Legal representative” for purposes of applicant or member personal and care decisions means durable power of attorney for health care, guardian, or next-of-kin (spouse, adult children, parents, adult siblings), as provided in Iowa Code chapters 144A, 144B, and 633. For applicant or member financial decisions, *“legal representative”* means conservator, power of attorney, fiduciary or representative payee.

“Medical provider” means a doctor of medicine or osteopathic medicine who is licensed to practice in the state of Iowa. Except as defined by Iowa law, a medical provider also means an advanced registered nurse practitioner or physician assistant who is licensed to practice in the state of Iowa.

“Member” means a patient or resident of IVH.

“Member support” means the dollar amount which is billed monthly to the member or legal representative for the member’s care.

“PASARR” means preadmission screening and annual resident review.

“Resource” means assets and income.

“Spouse” means a person of the opposite sex who is the legal or common-law wife or husband of a veteran.

“Surviving spouse” means a person of the opposite sex who is the legal or common-law widow or widower of a veteran.

“Therapeutic activity” means an activity that is considered as treatment. A therapist shall determine that a particular activity is beneficial to the well-being of a resident and shall include this determination in the resident’s plan of care.

“Veteran” means a person who served in the active military and who was discharged or released therefrom under conditions other than dishonorable. Honorable and general discharges qualify a person as a veteran. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility).

In addition, veteran includes a person who served in the merchant marine or as a civil service crew member between December 7, 1941, and August 15, 1945.

“Voluntary discharge” means a member wishes to terminate the member’s association with IVH on a permanent basis. This includes discharge for medical reasons which have been approved by a qualified medical provider. All other discharges are involuntary.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.2(35D) Eligibility requirements. Veterans, spouses of veterans, and Gold Star parents shall be eligible for admission to IVH in accordance with the following:

10.2(1) Veterans shall be eligible for admittance to IVH in accordance with the following conditions:

a. The individual does not have sufficient means for the individual’s support, or the individual is disabled by reason of disease, wounds, old age or otherwise and is in need of one of the multilevels of care available at IVH and is unable to defray the expenses of the necessary care, except as described at paragraph “e.”

b. The individual cannot be competitively employed on the day of admission or throughout the individual's residency.

c. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

d. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

e. Individuals who have sufficient means for their own care but who are otherwise eligible to become members of IVH may, if there is room for individuals described in paragraph "*a*" above, be admitted and allowed to remain at IVH upon payment of the cost of the individual's care in accordance with rules 801—10.14(35D) to 801—10.23(35D).

f. The individual must be eligible for care and treatment at a DVA medical center (excluding financial eligibility).

g. Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, M-1, Part 1, Chapter 3.11(h) (1), (2), and (3), and have prior DVA approval if the individual's income level exceeds the established cap.

10.2(2) Spouses and surviving spouses shall be admitted in accordance with the following:

a. The spouse or surviving spouse shall have been married to a veteran for at least one year preceding date of application or date of death of veteran.

b. The spouse of a veteran is eligible for admittance to IVH only if the veteran is admitted.

c. The surviving spouse of a deceased veteran is eligible for admittance to IVH if the deceased veteran would also be eligible for admittance to IVH if still living.

d. Spouses, surviving spouses and Gold Star parents admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

10.2(3) A Gold Star parent shall be eligible for admittance in accordance with the following conditions:

a. The parent's child died while serving in the armed forces of the United States.

b. The individual does not have sufficient means for the individual's support, or the individual is disabled by reason of disease, wounds, old age or otherwise and is in need of one of the multilevels of care available at IVH and is unable to defray the expenses of the necessary care, except as described at paragraph "*e*."

c. The individual cannot be competitively employed on the day of admission or throughout the individual's residency.

d. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

e. An individual who has sufficient means for the individual's own care but who is otherwise eligible to become a member of IVH may, if there is room for individuals described in paragraph "*b*" above, be admitted and allowed to remain at IVH upon payment of the cost of the individual's care in accordance with rules 801—10.14(35D) to 801—10.23(35D).

f. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

g. Gold Star parents, spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

10.2(4) An individual who was not a member of the United States armed forces may be eligible for admittance in accordance with the limitations described in subrule 10.2(1), if the following conditions are met:

a. The individual was a member of the armed services of a nation with which the United States was allied during a time of conflict.

b. The individual is eligible for admission to a DVA medical center in accordance with U.S.C. Title 38, Chapter 17, Medical Care, Subchapter 2, Section 1710.
[ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.3(35D) Application. All applicants shall apply for admission to IVH in accordance with the following subrules:

10.3(1) All applicants shall make application to IVH through the county commission of veterans affairs in the applicant's county of residence.

10.3(2) Application shall be made on the "Veteran Application for Admission to the Iowa Veterans Home," Form 475-0409, the "Spouse's Application for Admission to the Iowa Veterans Home," Form 475-0410, or the "Gold Star Parent Application for Admission to the Iowa Veterans Home," Form 475-0411. Separate applications shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

- a.* The county commission of veterans affairs' office.
- b.* DVA medical centers located in or serving veterans in the state of Iowa.
- c.* IVH.

10.3(3) The applicant shall be scheduled for a physical examination by a medical provider, and the results of the examination shall be entered on the application by the examining medical provider. If the applicant has had a complete physical examination within three months of application, a copy of this physical shall suffice. Information must be authenticated by the medical provider's original signature or electronic signature.

10.3(4) The following items shall be attached to the application before it is forwarded to IVH:

- a.* An affidavit signed by two members of the county commission of veterans affairs and notarized by the appropriate county official attesting to the best of their knowledge and belief that the applicant is a resident of that county and is an eligible applicant.
- b.* An original or a certified copy of the veteran's honorable discharge from the armed forces of the United States.
- c.* If the applicant is a married or surviving spouse, a copy of the marriage certificate or evidence of a common-law marriage on which a prudent person would rely.
- d.* If the applicant is a Gold Star parent, an original or certified copy of the veteran's birth certificate and certification of the child's death while serving in the armed forces of the United States.
- e.* An original or a certified copy of applicant's birth certificate if not in receipt of Social Security.
- f.* A copy of divorce decrees or death certificate for the spouse, if applicable.
- g.* A completed "Personal Functional Assessment," Form 475-0837.
- h.* A completed "Supplement to Application for Admission to the Iowa Veterans Home," Form 475-0843.
- i.* A completed "Financial Affidavit," Form 475-0839.

10.3(5) Once the requirements of subrules 10.3(2), 10.3(3) and 10.3(4) have been met, the county commission of veterans affairs shall forward the completed application to the admissions office at IVH. No county shall require additional requirements for the application for admission beyond the requirements stated in these rules. Neither shall a county require additional forms to be filled out or provided by the applicant other than the forms required by these rules.

10.3(6) Eligibility determinations are subject to approval by the commandant.
[ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.4(35D) Application processing.

10.4(1) Applications received by the admissions office shall be reviewed for completeness. The county commission of veterans affairs shall be required to submit additional information if needed.

10.4(2) The admissions committee shall assign the level and category of care required by the applicant. If a special care unit or treatment is required, this shall be designated.

10.4(3) Regardless of whether or not the applicant can be immediately admitted, the applicant shall be notified by the director of admissions or designee of the applicant's designated level and category of care. An applicant who does not wish to be admitted to the designated level and category of care

may submit evidence to show that another level or category of care may be more appropriate. However, once the admissions committee makes a final determination, the applicant who does not wish to be admitted under the designated level or category of care may withdraw the application in writing or have the application denied.

10.4(4) When space is not immediately available in the level and category of care assigned or on the appropriate special care unit, the applicant's name shall be placed on the appropriate waiting list for that level and category of care or special care unit in the order of the date the application was received.

10.4(5) When space is available at time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to IVH as follows:

a. An applicant whose physical examination or personal functional assessment, or both if applicable, was completed more than three months prior to the scheduled date of admittance may be required to obtain another physical examination by a medical provider or complete a current personal functional assessment, or both if applicable. This information shall be reviewed to determine that the applicant is capable of functioning at the previously determined level of care and category.

b. An applicant who requires a different level and category of care than previously determined shall be admitted to the level of care required if a bed is available or shall have the applicant's name placed on the waiting list for the appropriate level and category of care in accordance with the date the original application was received.

c. If there is a question regarding the level and category of care for which the applicant qualifies, the applicant shall be scheduled for a preadmission examination with appropriate staff in order to make a determination of appropriate level and category of care. If there is a question of whether or not the applicant can be appropriately treated within the scope of existing programs or facility license or both, the applicant shall be scheduled for a preadmission screening by appropriate staff.

d. Following the applicant's admission to a nursing care unit, the PASARR is completed.
[ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.5(35D) Applicant's responsibilities. Prior to admission to IVH, the applicant or a person acting on the applicant's behalf shall:

10.5(1) Report any change in the applicant's condition that could affect the previously determined level of care.

10.5(2) Report changes in mailing address, county or state of residency.

10.5(3) Provide additional information, verification or authorization for verification concerning the applicant's circumstances, condition of health, and resources if required.

10.5(4) Participate in a preadmission evaluation for level of care if required.

801—10.6(35D) Admission to IVH.

10.6(1) The applicant shall be notified by the director of admissions or designee to appear for admission to IVH.

10.6(2) Upon arrival at IVH, the applicant or legal representative shall report to the admissions office for an admission interview.

10.6(3) During the interview, the director of admissions or designee shall review the following items with the applicant or legal representative:

a. The applicant's resources.

b. The member support, billing process and banking services.

c. The "Contractual Agreement," Form 475-0694.

10.6(4) In order to meet the requirements of subrule 10.6(3), the applicant or legal representative shall complete and sign the following forms as applicable:

a. Permission for Treatment, Form 475-0814.

b. Financial Affidavit, Form 475-0839.

10.6(5) An applicant becomes a member at that point in time when the applicant or legal representative signs and dates the “Contractual Agreement,” Form 475-0694, or otherwise authorizes, in writing, acceptance of the terms of admittance specified in the Contractual Agreement.

10.6(6) Each member shall be placed on a unit providing the appropriate level and category of care based on individual needs.

a. A member requiring a change in placement based on individual care needs shall be transferred to a unit which provides the appropriate level and category of care within the scope of its licensure.

b. Members shall have priority over new admissions for placement on a unit when a vacant bed becomes available.

10.6(7) Care at IVH shall be provided in accordance with Iowa Code chapter 135C; 481—Chapter 57, Residential Care Facilities; 481—Chapter 58, Nursing Facilities; and DVA State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 2, 2.06, 2.07 and 2.09, November 4, 1992.

801—10.7 to 10.10 Reserved.

801—10.11(35D) Member rights.

10.11(1) Member rights shall be in accordance with those listed in 481—Chapter 57 for members residing in the residential care facility level of care, those listed in 481—Chapter 58 for members residing in the nursing facility level of care, and those noted in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, pertaining to residents of state veterans homes.

10.11(2) A member has the right to share a room with the member’s spouse when both member and spouse consent to the arrangement and both require the same level of care.

10.11(3) If a member is incompetent and not restored to legal capacity, or if the medical provider determines that a member is incapable of understanding and exercising these rights, the rights devolve to the member’s legal representative.

10.11(4) In some cases, a member may be determined to be in need of a fiduciary or agent by the DVA, the Social Security Administration or by a similar funding source. In these cases the commandant or designee may serve as agent subject to Iowa Code section 135C.24. All rights and responsibilities regarding the financial awards shall devolve to the commandant or designee.

[ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.12(35D) Member responsibilities.

10.12(1) The member or legal representative has the responsibility:

a. To timely report the existence of or changes in the member’s income, spouse’s income, assets or marital status, including the conversion of nonliquid assets to liquid assets. The member shall also complete the change report which is enclosed with the monthly member support bill.

b. To apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, private pension programs, or any combination), and accept the available billing programs offered at IVH.

c. To provide information concerning the physical condition and, to the best of the member’s knowledge, accurate and complete information concerning present physical complaints, past illnesses, hospitalizations, medications and other matters related to the member’s health.

d. To report unexpected changes in the member’s condition to the attending medical provider or other clinician.

e. To make it known if the member clearly comprehends a contemplated course of treatment and the member’s role in that treatment. If a member feels that a particular treatment is of no benefit, the member is responsible for reporting this to staff so that other alternatives may be considered.

f. To participate in treatment planning, cooperate with the treatment team in carrying out the treatment plan, and to participate in the evaluation of the member’s care.

g. To be considerate of the rights of other members and staff and control behavior in respect to smoking, noise, and number of visitors.

h. To treat other members and staff with dignity and respect.

- i.* To respect the property of other members, staff, and IVH. A member or legal representative may be held financially responsible for any property damaged or destroyed by the member.
- j.* To ask questions about anything that the member may not understand about the member's care or IVH.
- k.* To accept the consequences of the member's actions if the member refuses treatment or fails to follow prescribed care.
- l.* To follow the rules and regulations of IVH regarding member care and conduct as set out in subrule 10.40(1).
- m.* To keep scheduled appointments with staff. If unable to do so, the member is responsible for notifying appropriate staff.
- n.* To maintain personal hygiene, including clothing, and maintain personal living area based on the member's physical and mental capabilities.
- o.* To follow all fire, safety and sanitation regulations as established by IVH and applicable regulatory agencies.
- p.* To provide information and verification of resources. A member or legal representative must fulfill the member support obligation for member health care.
- q.* To carry Medicare Part B insurance if eligible. IVH shall buy the medical insurance portion of Medicare Part B if member is not eligible to receive Medicare Part B under Social Security.
- r.* To delegate to IVH the authorization to enroll the member in a prescription drug plan. The premium shall be deducted from the member's social security.

10.12(2) The member or legal representative is responsible for the full payment of the member's support charges within the calendar month that the monthly support bill is received. Failure to pay a monthly support bill within 30 days of issuance may result in discharge from IVH unless prior arrangements have been made.

10.12(3) In those instances when a legal representative is responsible for the handling of the member's resources, the legal representative shall keep any records necessary and provide all information or verification required for the computation of member support as set out in rule 801—10.14(35D). Failure of the legal representative to do so may result in the discharge of the member. In some cases, IVH may act to have the commandant or designee established as the member's fiduciary or agent as set out in subrule 10.11(4). In those cases when a guardian or conservator of a member fails to keep necessary records or provide needed information or verification or to meet the member support obligation, IVH may notify the court of problems and request to establish another individual as guardian or conservator. The conservator of a member shall submit a copy of the annual conservatorship report to IVH.

10.12(4) When a member temporarily needs a level of care that is not offered by IVH, the member shall be referred by IVH medical staff to a DVA medical center or to another medical facility. When a member goes to a DVA medical center, that member is responsible for the payment of any DVA charges except those charges exempted by the commandant.

a. If a member who is treated at a DVA medical center has coinsurance to supplement Medicare, this coinsurance shall be used for the DVA medical center charges. IVH shall be responsible for all DVA medical center charges if the member does not carry coinsurance supplement.

b. If a member chooses a medical facility other than a DVA medical center or other medical facility as referred by IVH medical staff, the member is responsible for costs resulting from care at the medical facility chosen.

801—10.13 Reserved.

801—10.14(35D) Computation of member support. As a condition of admittance to and residency in IVH, each member is required to contribute toward the cost of that member's care based on that member's resources and ability to pay.

10.14(1) A monthly member support bill shall be sent to the member or legal representative charging the member for care in the previous month with any necessary adjustment for prior months. A

member may be required to pay member support charges from the member's liquid assets, long-term care insurance benefits, or from the member's income. The monthly member support charge shall be the billable days, as set out in subrule 10.14(3), multiplied by the appropriate per diem from rule 801—10.15(35D). This amount shall be reduced by any offsets as set out in subrules 10.15(2) and 10.15(3). The member or legal representative shall pay an amount not to exceed the amount calculated based on the resources available for the cost of care as set out in this chapter.

10.14(2) Title XIX residents. If a member is certified as eligible and participating in the Title XIX program, the amount of payment shall be determined by the department of human services income maintenance worker.

10.14(3) Billable days (non-Title XIX). Billable days for members not participating in the Title XIX program shall be counted as follows:

- a. All days in the month for which the member received care (in-house).
- b. All leave days in excess of the 12 free days up through the fifty-ninth leave day. Any leave days in excess of 59 days shall be considered billable, but the member must pay the full member support, not the amount determined by resources.
- c. The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH. A hospital stay may occur more than once in a calendar year.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.15(35D) Per diems.

10.15(1) For members not participating in the Title XIX program, the per diem by which the billable days shall be multiplied shall be established as follows:

- a. *Nursing level of care.*
 - (1) The charge for care is the per diem submitted by IVH to department of human services for the Title XIX certified units as calculated in January and July of each year for the preceding six months.
 - (2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.
 - (3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.
- b. *Domiciliary level of care.*
 - (1) The total cost of care per member shall be determined in January and July of each year for the preceding six months and calculated in a manner similar to the nursing level of care. This cost shall be the charge for care.
 - (2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.
 - (3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

10.15(2) Veteran members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance for whom IVH receives a per diem from the U.S. DVA (under Title 38). IVH shall consider this per diem as a third-party reimbursement to the charge for care and shall be an offset to the member support bill. The offset of the per diem received (billed to DVA) shall be shown as an offset for the month billed. The provisions of 38 U.S.C. 1745(a), which were established by Section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109-461), set forth a mechanism for paying a higher per diem rate for certain veterans who have service-connected disabilities and are receiving nursing home care in state homes.

10.15(3) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The daily per diem charge shall be reduced by an amount equal to the "usual" Medicare premium calculated as a per diem. This offset shall be available only to members eligible for Medicare insurance.

10.15(4) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The member support charge shall be reduced in accordance with subrules 10.15(2) and 10.15(3), if applicable. The member shall then contribute all remaining available resources up to the charge for care.

Members receiving DVA pension and aid and attendance shall be considered as having used the amount equal to aid and attendance first in payment for their care at IVH.

10.15(5) Payment of support is due on the tenth of the month in which the monthly support bill is received, or ten business days after the member's last income deposit for that month.

a. If payment is not received by IVH within 30 days following the due date, a notice of discharge may be issued.

b. If there are extenuating circumstances, the member or legal representative should meet with the commandant or designee to work out a schedule of payments.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.16(35D) Assets. The following rules specify the treatment of assets, as defined in rule 801—10.1(35D), in the payment of member support as described in rule 801—10.14(35D). Only liquid assets shall be considered in the payment of member support.

10.16(1) For members living on Title XIX certified units who have applied for and are eligible to receive Title XIX medical assistance, rule 441—75.5(249A) shall apply. Financial eligibility for Title XIX shall be determined by the department of human services income maintenance worker.

10.16(2) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance, the following rules apply:

a. Assets considered. The assets considered shall include all assets owned by the member, or if married, both the member and the spouse living in the community, except for the following:

(1) The homestead is exempt as follows: The exempt homestead is defined as the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. Contiguous means that portions of the homestead cannot be separated from the home by intervening property owned by others. However, the homestead is considered contiguous if portions of it are separated from the home only because of roads or other public rights-of-way. Property that is not exempt as part of the homestead shall be treated in accordance with the rules of this chapter.

The homestead, as defined, can retain its exempt status for a period of time not to exceed 36 months, while the member, spouse and dependents are temporarily absent, provided the following conditions are met:

1. There is a specific purpose for the absence.
2. The member, spouse or dependents intend to return to the homestead when the reason for the absence has been accomplished.
3. The member, spouse or dependents can reasonably be expected to return to the home during the 36-month time limitation.
4. If a person is an applicant at the time the homestead becomes vacant due to the absence of the applicant, spouse or dependents, the first month of the 36-month period is the month of admission to IVH.

5. If a person is a member when the homestead becomes vacant due to the absence of the member, spouse or dependents, the first month of the 36-month period is the month following the month in which the homestead is vacated.

6. Any homestead that does not qualify for this exemption or any homestead that is vacant for a period of time exceeding the 36-month limit shall be treated in accordance with subrule 10.16(3).

- (2) Household goods, personal effects and motor vehicles.
- (3) The value of any burial spaces held for the purpose of providing a place for the burial of the member, spouse or any other member of the immediate family.
- (4) Exempt income-producing property includes, but is not limited to, tools, equipment, livestock, inventory and supplies, and grain held in storage.

(5) Other property essential to the means of self-support of either the member or spouse as to warrant its exclusion under the Supplemental Security Income program.

(6) Assets of a blind or disabled person who has a plan for achieving self-support as determined by the division of vocational rehabilitation or the department of human services.

(7) Assets of Native Americans belonging to certain tribes arising from judgment fund and payments from certain land and subsurface mineral rights. This does not include per capita payments from casino proceeds.

(8) Any amounts arising from Public Law 101-239 which provides assistance to veterans under the Agent Orange product liability litigation.

(9) Assistance under the Disaster Relief Act and Emergency Assistance Act or other assistance provided pursuant to federal statute as a result of a presidential disaster declaration and interest earned on these funds for the nine-month period beginning on the date these funds are received or for a longer period where good cause is shown.

(10) An amount that is irrevocable and separately identifiable, having a principal amount not in excess of a predetermined amount set by the department of human services, without an itemized billing, for the member or spouse to meet the burial and related expenses of that person.

(11) Federal assistance paid for housing occupied by the spouse living in the community.

(12) Assistance from a fund established by a state to aid victims of crime for nine months from receipt when the client demonstrates that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.

(13) Relocation assistance provided by a state or local government to a member or spouse comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which is subject to the treatment required by Section 216 of the Act.

(14) Any other asset excluded by statute.

b. Assets of a single member. When liquid assets not exempted in paragraph “a” above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

c. Assets of a married member with spouse in a care facility. If a member’s spouse is residing in a nursing facility, the member shall be treated as a single member for asset determination purposes. If the member and the spouse become members of IVH on the same day, all resources of both members shall be added together and split one-half to each member for asset determination purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

d. Assets of a married member with spouse living in the community. When liquid assets not exempted in paragraph “a” above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

The assets attributed to the member shall be determined from the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. All resources of both the member and the spouse shall be added together. If the total resources are less than \$24,000 (the amount set by 441 IAC 75.5(3) “d” and “f,” Public Law 100-365 and Public Law 100-485), then that amount shall be protected for the spouse living in the community. If applicable, the next \$24,000 shall be awarded to the member. Any resources over \$48,000 shall be split one-half to the member and one-half to the spouse up to a predetermined amount set by the department of human services. All resources over the predetermined amount shall be awarded to the member unless it is determined that the member would never be eligible for Medicaid benefits; in this circumstance, assets will be split one-half to the member and one-half to the spouse. Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process.

(1) If the member has transferred assets to the spouse living in the community under a court order for the support of the spouse, the amount transferred shall be the amount attributed to the spouse to the extent it exceeds the specified limits above.

(2) After the month in which the member is admitted, no attributed resources of the spouse living in the community shall be deemed available to the member during the continuous period in which the member is at IVH. Resources which are owned wholly or in part by the member and which are not transferred to the spouse living in the community shall be counted in determining member support. The assets of the member shall not count for member support to the extent that the member intends to transfer and does transfer the assets to the spouse living in the community within 90 days.

(3) Report of results. The department of human services shall provide the member and spouse and legal representative, if applicable, a report of the results of the attribution. The report shall state that either has a right to appeal the attribution in accordance with rule 801—10.45(35D).

e. Exception based on estrangement. When it is established by a disinterested third-party source and confirmed by the commandant or designee that the member is estranged from the spouse living in the community, member support shall be determined on the basis of resources of a single member.

10.16(3) When a member owns an available, nonliquid, nonexempt asset, the value of which would affect the computation of member support as described in rule 801—10.14(35D), the asset shall be liquidated. The value of that asset shall be considered in the computation of member support. The following paragraphs are to be considered when liquidating assets:

a. Net market value, or equity value, is the gross price for which property or an item can be sold on the open market less any legal debts, claims or liens against the property or item. IVH shall consider the condition and location of an item or property and local market conditions in determining the gross sales price of the item or property. In order for a loan or claim to be considered a lien or encumbrance against an asset, the loan or claim must be made under circumstances that result in the creditors having a recorded legal right to satisfy the debt.

b. An asset must be available in order for it to be treated in accordance with the rules of this chapter. An asset is considered available when:

(1) The member owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold or otherwise used and disposed of at the member's discretion; and

(2) The member has a legal interest in a liquidated sum and has the legal ability to make the sum available for member support.

c. A member must take all appropriate action to gain title and control of any asset of which the value would affect the computation of member support.

d. The value of the asset may be adjusted if the member or legal representative:

(1) Advertises the asset for sale, through appropriate methods, on a continual basis.

(2) Lists the asset with a real estate broker or other agent appropriate to the asset.

(3) Asks a reasonable price which is consistent with the asking price of similar items of property in the community.

(4) Does not refuse a reasonable offer.

(5) Does not sell the asset for an unreasonably low price.

e. Cash proceeds from the sale of an asset, conversion of an asset to cash, or receipt of any cash asset as defined in rule 801—10.1(35D) shall be used in the computation of member support beginning with the calendar month of receipt.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.17(35D) Divestment of assets.

10.17(1) “Intentional divestment of assets” means:

a. To knowingly sell, give or transfer by member or legal representative for less than fair market value, any asset, the value of which would affect member support; or

b. To knowingly and voluntarily place an asset, the value of which would affect member support, under a trust or other legal instrument that ends or limits the availability of that asset.

10.17(2) Transfers of resources shall be presumed to be divestiture unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling assets for less than fair market value, examples of transferring resources include, but are not limited to, establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the Supplemental Security Income program.

a. Convincing evidence to establish that the transaction was not a divestiture may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.

b. In rebutting the presumption that the transfer was a divestiture, the burden of proof is on the individual to establish:

- (1) The fair market value of the compensation;
- (2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource; and
- (3) That the agreement, contract, or expectation was established at the time of transfer.

10.17(3) An applicant or legal representative shall not knowingly and intentionally divest an asset, as set out in subrule 10.17(1), within the period established by Title XIX statute prior to admission, with the intention of reducing the applicant's member support or of obtaining admission to IVH.

When it is determined by the commandant or designee that an applicant did intentionally divest an asset, upon admission that applicant shall be charged member support as if divestment did not occur.

10.17(4) A member or legal representative shall not knowingly and intentionally divest an asset, as described in subrule 10.17(1), while a member with the intention of reducing the member support.

When it is discovered that a member or legal representative improperly divested an asset(s), that member shall be charged member support as if divestment did not occur.

801—10.18(35D) Commencement of civil action. The commandant or designee may file a civil action for money judgment against a member or discharged member or the member's legal representative for support charges when the member or discharged member fails to pay member support in accordance with 801—Chapter 10.

801—10.19(35D) Income. This rule describes the treatment of income, as defined at rule 801—10.1(35D), in the computation of member support as described at rule 801—10.14(35D).

10.19(1) For members living on Title XIX certified units who are eligible for Title XIX medical assistance, rule 441—75.5(249A) shall apply. For those members participating in the Title XIX medical assistance program, the difference between the \$140 personal needs allowance and the Title XIX personal needs allowance shall be returned to the member out of individual member participation.

10.19(2) For members living on units which are not Title XIX certified and members living on Title XIX certified units who are not eligible for Title XIX, the following shall apply:

- a.* The following types of income are exempt in the computation of member support:
- (1) The earned income of the spouse or dependents.
 - (2) Unearned income restricted to the needs of the spouse or dependents (Social Security, DVA, etc.).
 - (3) Any other income that can be specifically identified as accruing to the spouse or dependents.
 - (4) Nonrecurring gifts, contributions or winnings, not to exceed \$60 in a calendar quarter.
 - (5) Interest income of less than \$20 per month from any one source.
 - (6) State bonus for military services.
 - (7) Any earnings received by a member for that member's participation in money-raising activities administered by veterans organizations or auxiliaries.
 - (8) Any money received by a member from the sale of items resulting from a therapeutic activity.
 - (9) The first \$150 received by a member in a month for participation in the incentive therapy or other programs as described at rule 801—10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first \$75 shall be exempted.
 - (10) Personal loans.

- (11) In-kind contributions to the member.
- (12) Title XIX payments.
- (13) Yearly DVA compensation clothing allowance for those who qualify.
- (14) Other income as specifically exempted by statute.
- (15) Any income similar in its origin to the assets excluded in subparagraphs 10.16(2) "a"(6) and (7).
- (16) Income from participating as outlined in the community reentry program (IVH policy #174) or the IVH discharge planning policy (IVH policy #265).
 - b. Personal needs allowance. All members shall have an amount exempted from their monthly income intended to cover the purchase of clothing and incidentals.
 - (1) All income up to the first \$140 shall be kept as a personal needs allowance.
 - (2) The personal needs allowance shall be subtracted from the member's income prior to determination of moneys to which the spouse may be entitled.
 - c. Any type of income not specifically exempted shall be considered for the payment of member support as provided in rule 801—10.14(35D).
 - d. Determining income from property.
 - (1) Nontrust property. Where there is nontrust property, income paid in the name of one person shall be available only to that person unless the document providing income specifies differently. If payment of income is in the name of two persons, one-half is attributed to each. If payment is in the name of several persons, the income shall be considered in proportion to their ownership interest. If the member or spouse can establish different ownership by a preponderance of evidence, the income shall be divided in proportion to the ownership.
 - (2) Trust property. Where there is trust property, the payment of income shall be considered available as provided in the trust. In the absence of specific provisions in the trust, the income shall be considered as stated above for nontrust property.
 - e. The amount of income to consider in the computation of member support shall be as follows:
 - (1) Regular monthly pensions and entitlements. The amount of income to be considered is the amount of the monthly entitlement or pension received.
 - (2) Investments or nonrecurring lump-sum payments. Net unearned income from investments or nonrecurring lump-sum payments shall be determined by deducting income-producing costs from the gross unearned income. Income-producing costs include, but are not limited to, brokerage fees, property manager's salary, maintenance costs and attorney fees.
 - (3) Property sold on contract. The amount of income to consider shall be the amount received minus any payments for mortgage, taxes, insurance or assessments still owed on the property.
 - (4) Earned income from a rental, sole or partnership enterprise. The amount of income to consider shall be the net profit figure as determined for the Internal Revenue Service on the member's income tax return.

EXCEPTION: The deductions of the previous year's state and federal taxes and depreciation on the income tax return are not allowable deductions for the purpose of the computation of member support. If a tax return is not available, the member or legal representative shall provide all information and verification needed in order to correctly compute member support.

(5) Partnership income. The member's share of the net profit shall be determined in the same manner as the partnership percentage as determined for Internal Revenue Service's purposes.

10.19(3) Member income diversion to dependent spouse not living at IVH. A portion of the member's income shall be diverted to the spouse according to the following:

- a. Spouse living in the community. One-half the income in exclusion of an amount equal to aid and attendance and after reduction of personal needs allowance.
- b. Spouse in another nursing home not on Title XIX. The same amount as a spouse living in the community in accordance with paragraph 10.19(3) "a."
- c. Spouse in nursing home on Title XIX. Member shall be treated as single. If member is in receipt of DVA pension, the amount of income provided Title XIX spouse would be the DVA pension dependency amount.

d. Spouses living in a residential care facility. Spouses shall be treated under the same rules as a spouse living in the community in accordance with paragraph 10.19(3) “*a.*”

e. All current court order proceedings and guardian/conservatorship appointments regarding financial obligations, except child support or alimony, shall be honored.

10.19(4) Income disbursements.

a. All monthly diversions to spouse or valid court orders shall be mailed as designated or on a monthly basis.

b. All checks shall be mailed no later than the eighth day of any given month to proper recipient or, at IVH’s option, five business days after the member’s last income deposit for that month.

c. Monthly income disbursements to a community spouse may be delayed or canceled if there is an overdue amount owed for support payments.

[ARC 7890B, IAB 7/1/09, effective 7/1/09; ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.20(35D) Other income.

10.20(1) When a member receives regular monthly payments of unearned income, it shall be included in the resources available for the payment of member support.

10.20(2) When a member receives periodic recurring income which is received less frequently than monthly, this countable income, after the deduction of any allowable income-producing expenses, shall be considered in the month received.

10.20(3) When a member receives a nonrecurring retroactive payment from a specific entitlement source for a prior period of time, it shall be considered as income in the month received. The aid and attendance amount of the DVA pension shall be computed as a manual adjustment (available to member due to IVH nursing care).

10.20(4) Income from a particular source is considered terminated as of the date the member receives the last income payment from that source or the date that a sole or partnership enterprise ends, whichever is later.

10.20(5) When income from a particular source decreases in a calendar month, the decrease in income shall be considered in the computation of that month’s member support. Income from a particular source is considered to be decreased as of the date the member receives the first income payment in the decreased amount.

10.20(6) When income from a particular source increases in a month, the increase in income shall be considered in the computation of that month’s member support. Income from a particular source is considered to be increased as of the date the member receives the first income payment in the increased amount.

10.20(7) Recurring lump-sum payments shall be treated as income in the month received.

10.20(8) Nonrecurring lump-sum payments earned prior to admission, regardless of when received, shall not be counted as income but may be considered as an available liquid asset.

10.20(9) Any income as defined in rule 801—10.20(35D) that exceeds the member support billing for that month shall thereafter be considered a liquid asset available under rule 801—10.16(35D).

10.20(10) Through IVH programs, employment is only allowed in the community reentry program (IVH policy #174) or the IVH discharge planning policy (IVH policy #265).

[ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.21(35D) Fraud. Applicants, members or legal representatives who knowingly conceal the existence of resources may be subject to the billing of full member support, discharge for failure to pay for member’s care or denial of admission. Further, members who knowingly conceal liquid assets or income which would have affected member support shall be charged for the amount not previously billed due to the fraudulent act. If upon admission it is determined that medical or other pertinent information provided during the application process was fraudulent, notice of discharge may be issued. In addition, any applicant, member or legal representative suspected of fraud may be referred to the department of inspections and appeals, division of investigations, for possible criminal or civil action. The attorney general’s office shall conduct the investigation.

801—10.22(35D) Overcharges. When it is discovered that a member was charged for support in excess of the amount actually due, the member shall receive a refund or credit to the member's account. If the member is discharged or deceased, a refund shall be conveyed to the member or legal representative.

801—10.23(35D) Penalty.

10.23(1) All members who have resources in excess of the full support rate shall be charged the full member support rate. If any member does not apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, or any combination), fails to report resources accurately in order to not pay full support, or refuses to accept the available billing programs offered at IVH, that member shall be charged up to full member support as if these responsibilities had been followed. Failure to comply with these rules may result in discharge from IVH.

10.23(2) If a member is required to pay full member support under these rules, the monthly charge shall be calculated as the per diem in paragraph 10.15(1) "a" or 10.15(1) "b" times the billable days less any offsets. The only exception to this monthly charge will be the additional amount of aid and attendance in the DVA retroactive payment for the time period of nursing care at IVH. This amount, in total, shall be due regardless of resources available. If a member is required to pay member support based on additional resources, these figures shall be obtained from the appropriate agencies.

801—10.24 to 10.29 Reserved.

801—10.30(35D) Incentive therapy and nonprofit rehabilitative programs. Members may be offered the opportunity to perform services for IVH through the incentive therapy program as part of their plan of care. Participating members shall be compensated for their involvement in the incentive therapy program according to applicable guidelines established by the U.S. Department of Labor, Wage, and Hour Division, and the commandant or designee if members enrolled in nonprofit rehabilitative programs receive an income from such programs, that income shall be treated in the same manner as the incentive therapy program or IVH policy.

This rule is intended to implement Iowa Code section 35D.7(3).

801—10.31 to 10.34 Reserved.

801—10.35(35D) Handling of pension money and other funds. Each member who has not been assigned a guardian, conservator, fiduciary or representative payee or has not designated a power of attorney while competent or as otherwise specified, may manage that member's own personal financial affairs. Upon the receipt of written authorization from the member or legal representative to the commandant or designee, the commandant or designee may assist the member in the management of the member's financial affairs.

10.35(1) Pension money or other funds deposited with IVH are not assignable except as specified at subrule 10.19(3) or 10.40(2) "b"(1).

10.35(2) If authorized by a member, the commandant or designee may act on behalf of that member in receiving, disbursing, and accounting for personal funds of the member received from any source subject to the requirements of Iowa Code section 135C.24. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

10.35(3) IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member's personal deposits individually and shall deposit the funds in the membership account where the members' deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working Friday of each month.

10.35(4) If authorized in writing by the member or legal representative, the commandant or designee may make withdrawals against that member's personal account to pay regular bills and other expenses incurred by the member. The authorization may be given or withdrawn in writing by the member or

legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

10.35(5) The commandant or designee shall maintain a written record of each member's funds which are received by or deposited with IVH. The member or legal representative shall receive a monthly statement showing deposits, withdrawals, disbursements, interest and current balances. If the commandant or designee is made representative payee for the member's financial transactions, this statement shall be maintained in the member's administrative file.

10.35(6) Except as otherwise specified, funds deposited with IVH shall be released to the member or legal representative upon request with a statement showing deposits, disbursements, interest, and the final balance at the time the funds are withdrawn. When the member continues to maintain residency at IVH, the funds shall be released and statement provided within three working days following the request. When a member is being discharged from IVH, the funds shall be released and a statement provided no later than the tenth day of the month following the month of discharge.

10.35(7) Upon the death of a member with personal funds deposited with IVH, IVH will first take payment for the final support bill. If funds remain, IVH will convey promptly the member's funds to any outstanding funeral home bill, the individual paying last funeral expenses, or whoever is administering the member's estate. If probate papers are produced, a final accounting of those funds must also be provided to the individual administering the member's estate. If the value of the member's estate is so small as to make the granting of administration inadvisable, IVH must hold, then deliver all money plus interest within one year to the proper heirs equally or adhere to the member's request in the member's last will and testament.

This rule is intended to implement Iowa Code sections 35D.11(2) and 35D.12(2).
[ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.36(35D) Leave, bed holds and 96-hour passes.

10.36(1) *Non-Title XIX members.*

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Leave Against Medical Advice," Form 475-0940.

b. Leaves are required if the member expects to be absent past midnight.

c. All leaves other than free time shall require payment of member support charges as though the member were in residency. Failure to pay regular member support charges shall result in discharge of the member. Leave length may be changed by notification from the member or legal representative to the nursing unit social worker or domiciliary office.

d. Hospital leaves. Leaves spent in approved medical facilities away from IVH shall not be counted against the 59-day leave time limit as set out in paragraph 10.14(3) "b."

Hospital leaves shall be granted and the charges for such leaves shall be as follows: During the first ten days of any hospital stay, the member shall pay the regular and usual assessed charge of the level of care of the bed held. Beginning on the eleventh day through the remainder of the hospitalization, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization. Members discharged while on leave from IVH shall have the account closed before the first of the month following the discharge.

Leaves to other medical facilities for the purpose of treatment shall be treated as hospital leaves.

e. General leaves.

(1) Twelve days of leave time each calendar year shall be free time.

(2) The member shall be charged the usual support charge for leave time over 12 days up to and including 59 days.

(3) The member shall be charged the full member support for the level of care in which the member resides for leave time over 59 days.

(4) Leave time is not cumulative from one calendar year to another calendar year.

(5) Leave time the member has not utilized or cannot utilize shall not be credited toward the member's support.

(6) Support charges for the member on leave who wishes to retain the member's room or bed shall be due and payable as though the member were in residency as set forth in paragraph 10.36(1) "c."

f. When the nursing care member is on leave, the member shall remain on in-house status for the first 12 leave days per calendar year for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

g. When a member has used 12 non-hospital leave days, IVH is not financially responsible for any medical charges for the member while on leave.

10.36(2) *Members who are receiving Title XIX benefits.*

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Leave Against Medical Advice," Form 475-0940.

b. A leave as set out in paragraph 10.36(1) "b" is required if a member expects to be absent past midnight.

c. The member's bed shall be held while the member is visiting away from IVH for a period not to exceed 18 days in any calendar year. There is no restriction as to the amount of days taken in any one month or during any one visit, as long as the days taken in the calendar year do not exceed 18. Additional days shall be allowed if the member's medical provider recommends in the plan of care that additional days would be rehabilitative.

d. A member or a legal representative who wishes to exceed the 18 visitation days and retain the member's bed, but does not have medical provider recommendation for an extension, must make arrangements with the director of admissions or designee for payment of the rate determined by the department of human services income maintenance worker for all days in excess of the 18 visitation days. If prior arrangements and payment are not made, a member may be discharged in accordance with subrule 10.12(2).

e. A bed shall be held for a hospitalized member. The member's client participation shall be paid according to the department of human services' income maintenance worker for all hospitalized days until member returns or is discharged.

f. IVH is not financially responsible for any medical charges for the member when visiting away from IVH.

10.36(3) *Ninety-six-hour passes for domiciliary members.*

a. A pass shall not exceed 96 hours. If a member expects to be gone for more than 96 hours, a leave is required.

b. Upon return from a pass, the member must spend 24 hours in residence before another pass is issued.

c. When a member is on pass, the member shall remain on in-house status for DVA per diem purposes; IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 8417B, IAB 12/30/09, effective 2/3/10]

801—10.37 to 10.39 Reserved.

801—10.40(35D) Requirements for member conduct. The commandant shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the commandant may transfer or discharge any member from IVH when the commandant determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

10.40(1) In addition to the member responsibilities as set out in rule 801—10.12(35D), each member shall also comply with the following requirements:

a. The use of intoxicants or alcoholic beverages on IVH premises is prohibited unless prescribed by a medical provider.

b. The bringing of alcoholic beverages or illicit substances on IVH premises is prohibited. Any illicit substances or drug paraphernalia or both found in the member's possession shall be grounds for immediate discharge.

c. The use of illegal substances while a member of IVH is prohibited. A urinalysis shall confirm the presence of illegal substances. A member's refusal to submit to a urinalysis in response to a request based on probable cause shall be considered a positive result and is grounds for discharge.

d. Firearms or weapons of any nature shall be turned in to the adjutant or designee for safekeeping. The adjutant or designee shall decide if an instrument is a weapon. Firearms or weapons in the possession of a member which constitute a hazard to self or others shall be removed and stored in a place provided and controlled by the facility.

e. Smoking in members' rooms is prohibited. Members who smoke shall do so within designated smoking areas so as not to endanger self or others.

f. Continuously disruptive behavior on the part of a member, such as fighting with other members, visitors or staff, assault or theft, is grounds for transfer or discharge.

g. Members shall comply with legal requests and orders of the commandant or designee.

h. Members shall not violate state and federal statutes.

i. Members shall report to the director of admissions or designee any changes in assets/income, and pay support by the tenth of each month.

10.40(2) When a member is found in violation of the requirements of conduct established in subrule 10.40(1), the following steps may be taken:

a. For a first offense, a member is counseled by an appropriate staff person and options for correcting the behavior are considered. Options may include but are not limited to:

- (1) Funds restriction.
- (2) Substance abuse treatment.
- (3) Mental health services.

b. IVH control of the member's personal funds as follows:

(1) The pension money and other incomes and available liquid assets shall be deposited by the commandant or designee in a separate account for and on behalf of the member. The commandant or designee shall, under the procedures established in subrules 10.35(3) and 10.35(4), make withdrawals and disbursements to meet the regular bills and other expenses of the member.

(2) If, after a period of up to six months, the member's behavior is deemed appropriate by the facility, the handling of funds will be reviewed, and funds may be returned to the member.

(3) If the member is discharged from IVH, the balance of the deposit shall be paid to the member or financial legal representative within 30 days of discharge.

c. For a second offense, a member is offered the services above and is placed on probation that warns a third offense may lead to discharge.

d. For a third offense, discharge from IVH in accordance with subrule 10.40(3).

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member's violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the IRCC, in conjunction with the medical provider and mental health personnel, deems that the member's behavior poses a threat of imminent danger, the commandant may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member's county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, the department of inspections and appeals, and the department on aging's long-term care ombudsman to ensure that the member's health, safety or welfare shall not be in danger upon the member's release.

10.40(4) A member who has been previously discharged under the provisions of subrule 10.40(2) or 10.40(3) shall be readmitted to IVH only upon the approval of the commandant or designee. If not approved, the applicant shall receive written notice of the denial. A copy of the denial notice shall be

forwarded to the commission and the appropriate county commission of veterans affairs. Any decision to deny readmittance is subject to the review of the commission.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.41(35D) County of settlement upon discharge. A member does not acquire legal settlement in the county in which IVH is located unless the member is voluntarily or involuntarily discharged from IVH, continuously resides in the county for a period of one year subsequent to the discharge and during that year is not readmitted to IVH and does not receive any services from IVH.

801—10.42(35D) Disposition of personal property and funds.

10.42(1) A discharged member shall remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member's expense to the member's last-known address. When the member is discharged from IVH, the member's funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

10.42(2) Following written notification to the legal representative or first next of kin, a deceased member's personal property remaining at IVH 30 days after written notification shall become the property of IVH to dispose of as the commandant or designee directs. If there is a known legal representative or first next of kin, the property may be shipped to the legal representative or first next of kin at the expense of the estate, legal representative, or first next of kin.

10.42(3) Upon death of a member with personal funds deposited at IVH, IVH shall convey the member's funds with a final statement to the legal representative administering the member's estate. When an estate is not opened or in cases where no executor is appointed, IVH shall attempt to locate the deceased member's heirs and deliver the funds and property to the heirs within one year after date of death.

801—10.43(35D) Rule enforcement—power to suspend and discharge members. The commandant shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and discharge any member from IVH for infraction of the rules when the commandant determines that the health, safety or welfare of the members of IVH is in immediate danger and other reasonable alternatives have been exhausted. The suspension and discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with Iowa Code chapter 17A.

10.43(1) The commandant shall, with the input and recommendation of the IRCC, involuntarily discharge a member for any of the following reasons:

a. The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1) "a," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1) "a" if the member's actions or behavior jeopardizes the life or safety of other members or staff.

b. The member refuses to utilize the resources available to address issues identified in the member's collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1) "b," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member's actions or behavior jeopardizes the life or safety of other members or staff.

c. The member's medical or life skills needs have been met to the extent possible through the services provided by IVH and the member no longer requires a residential or nursing level of care, as determined by the IRCC.

d. The member requires a level of licensed care not provided at IVH.

10.43(2) Provisions for member following discharge from IVH.

a. If a member is discharged under this rule, the discharge plan shall include placement in a suitable living situation which may include but is not limited to a transitional living program approved by the commission or a living program provided by DVA.

b. If a member is involuntarily discharged under this rule, the commission shall, to the greatest extent possible, ensure against the member being homeless and ensure that the domicile to which the member is discharged is fit and habitable and offers a safe and clean environment which is free from health hazards and provides appropriate heating, ventilation and protection from the elements.

10.43(3) Discharge notice, including right to appeal. An involuntary discharge of a member under this rule shall be preceded by a written notice to the member. The notice shall state that, unless the discharge is an immediate discharge due to the member's actions or behavior which jeopardizes the life or safety of other members or staff, the effective date of the discharge is 30 calendar days from the date of receipt of the discharge notice, and that the member has the right to appeal the discharge. In addition, the discharge notice shall contain:

a. The stated reason for the proposed discharge or transfer.

b. The actual effective date of the proposed discharge or transfer.

c. A statement in not less than 12-point type which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as "Commission") within five (5) calendar days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held, and a decision rendered within ten (10) calendar days of the filing of the appeal. Provision may be made for extension of the ten (10) day requirement upon request to the Commission designee. If you lose the hearing, you will not be discharged or transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five (5) days following final decision of such hearing. To request a hearing or receive further information, call the Commission or write to the Commission to the attention of Chairperson, Commission of Veterans Affairs."

10.43(4) Emergency discharge. In the case of an emergency transfer or discharge relating to a threat of imminent harm, the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file, and it must contain all the information required by 10.43(3). In addition, the notice must contain a statement in not less than 12-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as 'Commission') within 5 calendar days after receiving this notice. If you request a hearing, it will be held and a decision rendered within 10 calendar days of the filing of the appeal no later than 14 days after receipt of your request by the Commission. You may be transferred or discharged before the hearing is

held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, you may call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs.”

10.43(5) Appeal by member.

a. If a member appeals the discharge under this rule, the member shall be provided with the information relating to the appeals process as specified in rule 801—10.47(35D).

b. If a member appeals the discharge under this rule, the involuntary discharge appeal process in rule 801—10.47(35D) shall apply.

10.43(6) By the fourth Monday of each session of the general assembly, the commandant shall submit a report annually to the senate veterans affairs committee and the house veterans affairs committee specifying the number, circumstances and placement of each member involuntarily discharged from IVH under this rule during the previous calendar year.

10.43(7) Any involuntary discharge by the commandant under this rule shall comply with the rules adopted by the commission and by the department of inspections and appeals pursuant to 2009 Iowa Acts, Senate File 407, section 2.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 8417B, IAB 12/30/09, effective 2/3/10]

801—10.44 Reserved.

APPEAL PROCESS

801—10.45(35A,35D) Applicant appeal process. An applicant who believes that any of the provisions of 801—Chapter 10 have not been upheld, or have been upheld unfairly, may file an appeal directly with the commandant containing a statement of the grievance and requested action. The commandant shall investigate and may hold an informal hearing with the applicant and other involved individuals. Subrules 10.46(4) to 10.46(8) apply subsequently. The commandant shall notify the applicant of the decision in writing within ten working days of receipt of the grievance.

801—10.46(35A,35D) Member appeal process. A member who believes that any of the provisions of 801—Chapter 10 have not been upheld or have been upheld unfairly may file an appeal.

10.46(1) A member shall discuss the problem and action desired with the assigned social worker within five working days of the incident which caused the problem. The social worker shall investigate the situation and attempt to resolve the problem within five working days of the discussion with the member. If the assigned social worker has allegedly caused the grievance, the member may file the grievance directly with the director of resident and family services.

10.46(2) If unable to resolve the problem, or if the member is dissatisfied with the solution, the social worker shall assist the member with filing a formal grievance and shall submit a report of the facts and recommendations to the director of resident and family services within five working days of the discussion with the member. The director of resident and family services shall inform the member of the decision in writing within five working days of receipt of the social worker’s report.

10.46(3) If the member is not satisfied with the decision of the director of resident and family services, or if no decision is given within the time specified in subrule 10.46(2), the member may appeal to the commandant within ten working days of the decision of the director of resident and family services or, if no decision is given, within ten working days of the time limit specified in subrule 10.46(2). The grievance shall be submitted in writing and contain a statement of the cause of the grievance and requested action. A copy of the decision of the director of resident and family services shall be attached to the grievance statement, if applicable. The commandant shall investigate the grievance and may hold an informal hearing with the member, director of resident and family services, and other involved individuals. The commandant shall notify the member and the director of resident and family services of the decision in writing within ten working days of receipt of the grievance.

10.46(4) If the member is not satisfied with the decision of the commandant, or if no decision is given within the time limits specified in subrule 10.46(3), the member may appeal to the commission within ten working days of the commandant’s decision. The member and commandant shall be notified

in writing within five working days of the commission's receipt of the appeal. The commission shall schedule a hearing with the member, commandant, and other involved individuals to determine the facts and make a final decision.

10.46(5) The member may appoint any individual to represent the member in the appeal process, at the member's expense.

10.46(6) No reprisals of any kind shall be taken against a member for filing an appeal.

10.46(7) The member may obtain judicial review of the commission's final decision in accordance with Iowa Code chapter 17A.

10.46(8) The time limits specified in the above subrules may be extended when mutually agreed upon by the persons involved in the appeal process.

Rules 801—10.45(35A,35D) and 801—10.46(35A,35D) are intended to implement Iowa Code subsection 35A.3(4) and Iowa Code chapter 35D.

801—10.47(35D) Involuntary discharge appeal. When a member appeals an involuntary discharge, the following provisions shall apply:

10.47(1) The member shall file the appeal with the commission within 5 calendar days of receipt of the discharge notice.

10.47(2) The commission shall conduct a contested case proceeding in accordance with the uniform rules on contested case proceedings found in 801—Chapter 8. The rules in 801—Chapter 8 are adopted by reference with the following amendment: The presiding officer must be a member of the commission and cannot be an administrative law judge with the department of inspections and appeals.

10.47(3) The commission shall render a decision on the appeal and notify the member of the decision in writing within 10 calendar days of the filing of the appeal.

10.47(4) If the member is not satisfied with the decision of the commission, the member may appeal the commission's decision by filing an appeal with the department of inspections and appeals within 5 calendar days of being notified in writing of the commission's decision.

10.47(5) The department of inspections and appeals shall render a decision on the appeal of the commission's decision and notify the member of the decision in writing within 15 calendar days of the filing of the appeal with the department.

10.47(6) The maximum time period that shall elapse between receipt by the member of the discharge notice and actual discharge shall not exceed 55 days which includes the 30-day discharge notice period and any time during which any appeals to the commission or the department of inspections and appeals are pending.

10.47(7) If a member is not satisfied with the decision of the department of inspections and appeals, the member may seek judicial review in accordance with Iowa Code chapter 17A. A member's discharge under rule 801—10.43(35D) shall not be stayed while judicial review is pending.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 8417B, IAB 12/30/09, effective 2/3/10; ARC 8635B, IAB 3/24/10, effective 4/28/10]

801—10.48 and 10.49 Reserved.

GROUPS AND FACILITY ADMINISTRATION

801—10.50(35D) Visitors. Visitors are welcome to IVH subject to the following conditions:

10.50(1) Member visitation hours are from 8 a.m. to 11 p.m. daily. Visiting hours may be extended on an individual basis with the approval of the commandant or designee.

10.50(2) Visitors are subject to the policies and procedures as established by IVH rules.

10.50(3) Tours of IVH may be arranged by contacting the commandant or designee.

10.50(4) Firearms, drugs, or alcoholic beverages are permitted on IVH grounds only with the permission of the commandant or designee.

10.50(5) Any disruptive behavior on the part of a visitor shall result in modification, denial or termination of visiting privileges.

10.50(6) Trespass. Visitors shall not enter IVH grounds with the intent to commit a public offense, remain upon the grounds or in IVH buildings without justification after being notified or requested to abstain from entering, or to remove or vacate therefrom by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of IVH and its grounds.

10.50(7) Any visitor violating any of the rules within this chapter may be restricted from IVH for a period of time to be determined by the commandant or designee.

801—10.51(35D) Mail.

10.51(1) Each competent member shall be afforded a choice in the methods of handling the member's business mail and in meeting the member's responsibilities for reporting resources for computation of member support purposes. A member found to be mentally incompetent shall have that member's business mail handled in a manner as to respect that member's dignity and still meet the needs of IVH for complete information regarding resources.

10.51(2) Each competent member shall be allowed to handle that member's business mail to the degree of responsibility chosen by the member. A member may:

a. Elect to receive all business mail personally and provide the admissions office with financial documentation, or

b. Designate that the member shall receive personal mail items, but business mail received at IVH from entitlement sources or concerning assets shall be routed to the director of admissions or designee.

801—10.52(35D) Interviews and statements.

10.52(1) Releases to the news media shall be the responsibility of the commandant or designee. Authority for dissemination and release of information shall be designated to other persons at the discretion of the commandant or designee.

10.52(2) Interviews of members within IVH by the news media or other outside groups are permitted only with the prior written consent of the member to be interviewed or the member's legal representative. At the request of the person or group who wishes to conduct an interview, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

801—10.53(35D) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the commandant or designee. The commandant or designee shall evaluate the donation in terms of the nature of the contribution to the facility program. The commandant or designee shall be responsible for accepting the donation and reporting the gift to the commission. All monetary gifts shall be acknowledged in writing to the donor.

801—10.54(35D) Photographing and recording of members and use of cameras.

10.54(1) Photographs and recordings of members within IVH by news media or other outside groups are permitted only with the prior written consent of the member to be photographed or recorded, or the member's legal representative. At the request of the person or group who wishes to make photographs or recordings, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

10.54(2) Every effort shall be made to preserve the inherent dignity of the member and to preclude exploitation or embarrassment of the member or the family of the member.

801—10.55(35D) Use of grounds and facilities.

10.55(1) Persons wishing to use the facilities and grounds for civic purposes, programs for members, meetings, and similar purposes, must contact the commandant or designee at least two weeks in advance of the requested date. The commandant or designee may disapprove a request when the requested facilities are scheduled for use by or for the members, or when the activity would disrupt the normal operation of IVH. Previous arrangements to use the facilities or grounds may be canceled by the commandant or designee in the event of an emergency or when changes in the schedule require the use of the facilities or grounds for the members. Persons who use the facilities or grounds shall be held

responsible for leaving the facilities or grounds in satisfactory condition and for any damages caused by or resulting from use.

10.55(2) Members of outside organizations permitted to use facilities or grounds shall observe the same rules as visitors to the facility.

801—10.56(35D) Nonmember use of cottages. Cottages may be made available to persons on the staff of IVH or to other members of the public with the commandant's approval and at the established rate.

10.56(1) Expenses incurred as a result of damage or need for exceptional cleaning/sanitizing procedures, or both, may result in additional charges to the visitor as determined by IVH.

10.56(2) Posted occupancy capacities shall not be exceeded and may be grounds for denial of use.

10.56(3) Pets are not allowed inside the cottages. Visitors who bring pets must comply with IVH rules regarding pet health and safety. Visiting pets will be housed in a portable pet kennel outside the cottage and kept on a leash while on the IVH grounds. The kennel shall be provided by the pet owner.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 9689B, IAB 8/24/11, effective 9/28/11]

801—10.57(35D) Operating motor vehicles on grounds.

10.57(1) The operator of a motor vehicle shall have a valid license for the type of vehicle being driven upon IVH grounds.

10.57(2) All persons operating a motor vehicle on IVH grounds shall comply with the applicable state and local laws and IVH policies.

10.57(3) No driver of a motor vehicle or motorcycle shall disobey the instructions of any traffic-control device, warning, or sign placed.

10.57(4) No person shall drive any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of person or property. The person operating the motor vehicle or motorcycle shall have same under control and shall reduce the speed to 20 miles per hour on IVH grounds and reduce the speed to a lower, reasonable rate when approaching and passing a person walking in the traveled portion of a street.

10.57(5) No person shall stop, park, or leave standing any type vehicle in established fire lanes, emergency vehicle areas, and other essential lanes. No person shall park any type vehicle on roadways.

10.57(6) No person shall leave any type vehicle unattended by not locking doors or removing keys.

10.57(7) Failure to comply with rules may cause limitation or curtailment of driving privileges on IVH grounds for an indefinite period.

10.57(8) Motor vehicles belonging to members may be parked in member-designated parking on IVH grounds.

This chapter is intended to implement Iowa Code subsection 35A.3(4) and chapter 35D.

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